

November 12, 2013

In re: MCI Metro Access Transmission Services, Inc.

Docket No:36BPREFZZ9796

Statement of Record:

1. MCI Metro Access Transmission Services, Inc. (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board on September 21, 2009 requesting review of a Philadelphia Department of Revenue refund denial. The petition requested review of the denial of their refund request for _____ resulting from an overpayment of the Business Income and Receipts Tax (BIRT) estimated payment made in 2004 for the 2005 BIRT tax year payment.
2. A public hearing before the Tax Review Board was scheduled for March 15, 2011 and continued at Petitioner's request.
3. A public hearing before the Tax Review Board was scheduled for June 23, 2011 and continued at the City Law Department's request for settlement discussions between the parties.
4. A public hearing before the Tax Review Board was scheduled for March 15, 2012. At the conclusion of the hearing, the matter was taken under advisement for consideration by the Tax Review Board. The parties were not requested to brief the issues but the City was requested to provide a copy of a database screen with the Petitioner's relevant account information.
5. A public hearing was held on Thursday August 1, 2013 for the purposes of announcing the decision of the Tax Review Board. The decision as announced at that time was that Petitioner was entitled to a credit of _____ on its BIRT account.
6. The City of Philadelphia filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioner filed a Petition for Appeal to the Tax Review Board (TRB) to request a refund of an overpayment of _____ paid as part of an estimated payment toward the 2005 Business Income and Receipts Tax (BIRT).
2. The refund request arose from a payment submitted in September 2005. This payment was submitted with the 2004 BIRT return as the mandatory estimated payment of _____ for the 2005 tax year.

3. When Petitioner filed its 2005 BIRT return in September 2006, it failed to take credit for the estimated payment made in September 2005.
4. Subsequent to 2006, some of this 2005 overpayment was used by the City to offset tax liabilities of Petitioner.
5. On June 9, 2009, Petitioner filed a refund request for the remaining overpayment as only had been used as a credit against Petitioner's tax liabilities.
6. The refund request was denied by the Department of Revenue as untimely and barred by The Philadelphia Code Statute of Limitations.
7. Petitioner's position was that the due date for the 2005 BIRT return and payment was the extended filing date in September 2006 extending the 3 year statute of limitations for requesting a refund to September 2009 and making the June 2009 refund petition filing within the required 3 years and on time.
8. The City's position was that the due date for 2005 BIRT was April 17, 2006 regardless of whether Petitioner actually filed the return by that date. The Petitioner's September 2006 filing pursuant to an extension granted by the City did not extend the statutory due date. Both the return and tax were due April 17, 2006. And in fact the payment in question was paid even earlier in September 2005. Therefore the City argued that the June 2009 refund request by Petitioner was beyond 3 years from both the actual tax payment and the return due date. As such, Petitioner's refund request was time barred by The Philadelphia Code Chapter 19-1703(1)(d)

Conclusions of Law:

The City denied Petitioner's refund claim as beyond the statute of limitations in The Philadelphia Code Chapter 19-1703(1)(d) which sets forth the filing parameters for such refund requests and states:

Every petition for refund of moneys collected by the Department on or after January 1, 1980, for or on behalf of the City or the School District of Philadelphia, including but not limited to any tax, water or sewer rent, license fee or other charge, and interest and penalties thereon, shall be filed with the Department *within 3 years from the date of payment to the City or the School District of Philadelphia or the due date, whichever is later.* (emphasis added)

As stated in *City Of Philadelphia v. Philadelphia Fresh Food Terminal Corporation*, Pa Cmwlth Ct. 2008, the Philadelphia Code Section 19-1703(1)(d) is a statute of repose. The three-year period begins to run after a definitively established event, the later of the payment date or the due date. This section of the Philadelphia Code establishes a definitive amount of time in which one has to file a refund request following which the right to a refund is extinguished.

Business Income and Receipts Tax returns are "due by April 15th of each year following the year for which the taxpayer did business in Philadelphia." See Philadelphia Code

§19-2606(2). This April 15th deadline is the due date for both filing of the BIRT return and the payment of the BIRT.

In applying this standard, it was the decision of the TRB that refunds could not be granted because the September 2005 estimated tax payment and the April 17, 2006 due date for the filing of the BIRT return placed these refund request first made on June 9, 2009 outside the 3 year statute of limitations. Therefore this refund was barred by The Philadelphia Code Chapter 19-1703(1)(d).

The TRB then turned to The Philadelphia Code Chapter 19-2610 which addresses the circumstance of when a mandatory estimated payment results in an overpayment and states:

The Department shall promulgate regulations to provide for estimated tax payments to be paid concurrently with the filing of any return, *and for credits to be granted on any overpayment of estimated tax payment.* Estimated business privilege tax payments for any given Tax Year shall be calculated without taking into account any reductions in tax rates or changes to apportionment formulas required by Bill No. 110554 for such Tax Year. The Department shall also promulgate regulations to provide for transition rules. Failure to make an estimated payment pursuant to these regulations shall subject a taxpayer to interest, penalties and costs as provided in Section 19-509. (emphasis added)

All parties agreed that Petitioner's overpayment for which it now seeks a refund resulted from the estimated tax payment meant for the eventual 2005 tax liability.

The language in Section 19-2610 is clear. The Philadelphia Code states that taxpayers are to receive credits when their estimated payments contribute to overpayments. The Tax Review Board was not directed to any regulations that might provide guidance or interpretation of how these credits shall be provided and therefore is guided by The Philadelphia Code language itself. There are no qualifiers or limitations in this provision of the ordinance. In this case, the Department did not issue credits to Petitioner for the overpayment from the estimated BIRT payment for the 2005 tax year.

It was the decision of the TRB that Petitioner was entitled to a credit for the remaining overpayment created by the mandatory estimated tax payment.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Christian DiCicco, Esq.

Milton Oates