

February 12, 2015

IN RE: ROLAND ANDERSON

DOCKET NUMBERS: 36BPMERZZ8067, 36WMMERZZ9315

15-2

**Statement of Record**

1. Roland Anderson (hereafter "Petitioner") filed two Petitions for Appeal with the Tax Review Board (TRB) on April 10, 2013 requesting review of assessments for Business Income and Receipts Tax (BIRT) and Wage Tax.
2. A public hearing before a Tax Review Board Master was scheduled for October 30, 2013 and continued at that time.
3. A public hearing before the Tax Review Board was scheduled for February 6, 2014. At the conclusion of the hearing, the matter was taken under advisement for review of the evidence presented.
4. A public hearing was scheduled for May 13, 2014 at which time the Tax Review Board announced its decision to deny the petition.
5. Petitioner filed an appeal to the Court of Common Pleas.

**Findings of Fact:**

1. Petitioner filed a Petition for Appeal requesting review of the following tax assessments: Business Income and Receipts Tax (BIRT) for the tax years 1988, 1990, 1992 through 1994; and Wage Tax for the tax years 1989, 1990 and 1992.
2. These tax delinquencies under appeal resulted from a bus charter business and accompanying real estate owned and operated by Petitioner during the tax years when these delinquencies arose. The business eventually failed and had ceased to operate well before the review.
3. In October 1993, Petitioner filed for bankruptcy. The bankruptcy was discharged in February 1996.
4. The tax balances under appeal survived the bankruptcy. There was no dispute that these taxes with accompanying interest and penalty balances remained due.
5. At some point in 1999, one of Petitioner's properties was sold at Sheriff's Sale. Petitioner's testimony was that some of the proceeds from that sale were applied to his tax liabilities and the balances before the Tax Review Board were not reflecting any of these amounts. Petitioner did not have documentation to establish how any Sheriff Sale proceeds had been distributed.
6. The City's position as to any 1999 Sheriff Sale proceeds was that any funds from a Sheriff's Sale were not used to pay down these BIRT and Wage Tax, but went to costs

and delinquencies associated with the sold property, such as water bills or real estate taxes for example.

7. Petitioner had no paperwork to prove that any Sheriff Sale proceeds were applied to the BIRT or Wage Tax before the Board.
8. Petitioner requested a reduction in the tax principal due and abatement of all interest and penalties based on financial hardship and his belief that Sheriff Sale proceeds either were or should have been credited against some of these tax delinquencies.
9. To help in the recovery of these delinquent taxes the city was deducting a certain amount monthly from the pension he receives as a retired city employee.
10. Petitioner did not have any knowledge of where the Sheriff Sale proceeds were distributed. (See NIT page 12)

**Conclusions of Law:**

The City's threshold challenge to Petitioner's appeal was that the Petition for Appeal was filed beyond the 60 day requirement set forth in The Philadelphia Code Chapter 19-1702.

The Tax Review Board granted Nunc Pro Tunc status based on Petitioner's testimony that it had taken him years to straighten out his financial status with regard to his bankruptcy filing, a Sheriff Sale of one property he owned, and his mistaken belief that at least one other property he owned had been sold by the city at Sheriff Sale with proceeds to be then be used to reduce these tax delinquencies.

However, once this threshold was met, the burden of proof remained on Petitioner to establish with substantial evidence that he was entitled to relief from the assessments or waiver of interest and penalty.

Petitioner did not dispute the original tax assessment or the amounts claimed by the city as due. He believed that some portion of these taxes had been paid from Sheriff Sale proceeds of a property he owned and through a monthly payroll deduction from his city pension.

Petitioner's testimony was vague and he did not have documentation to show that any of these monies were or should have been credited against the taxes at issue in this appeal.

As the city representative pointed out, Sheriff Sale proceeds frequently cover property related expenses. The taxes at issue were not subject to a lien on that property. Petitioner did not provide documentation to show that any of the sale proceeds were distributed for BIRT or Wage Tax.

Petitioner admitted that he did not know where the sale proceeds went and may well have gone to pay other obligations.

The Philadelphia Code Chapter 19-1705 provides the following authorization to the TRB for abatement of penalties and /or interest:

2) Upon the filing of any petition for the waiver of interest and penalties accruing upon any unpaid money or claim collectible by the Department of Revenue, for or on behalf of the City or the School District of Philadelphia, the Tax Review Board may abate in whole or in part interest or penalties, or both, where in the opinion of the Board the petitioner acted in good faith, without negligence and no intent to defraud.

(3) The filing of a Petition for Review shall be deemed to include therein, whether or not specifically stated, a request for the waiver of interest and penalties. The Board shall rule upon the waiver of interest and penalties in conjunction with its ruling upon the Petition for Review. The failure of the Board to abate interest or penalties in whole or in part in its decision on the Petition for Review shall have the effect of a denial of such abatement.

All tax obligations under appeal were well over 20 years old and the bankruptcy had been discharged in 1996. Petitioner provided no reasons to justify the length of time that has passed without directly addressing these tax liabilities.

His own documentation was incomplete and his delay of so many years made it difficult for the City to research and find information and paperwork that Petitioner wanted the Revenue Department to provide.

Petitioner's request for both a reduction in the tax principal due and a waiver of all interest and penalty had no foundation that the Tax Review Board could support. There were no facts to establish that the tax principal assessment was in error, and there was no showing of good faith by the Petitioner in trying to resolve this matter, either by coming forward at the time the taxes were due or by making voluntary payments to reduce the principal.

An additional factor in the Board's consideration was that Wage Tax is a responsibility of the employer as an agent of the city and is actually paid by the employee from his or her wages. So while it was not established as to whether Petitioner actually withheld the Wage Tax from employees and did not remit those taxes to the city or failed to withhold them, the fact remains that these failures put his employees at risk of being tax delinquent with the city.

For all of the above factors, the decision of the Tax Review Board was to deny the petition.

**Concurred:**

**Nancy Kammerdeiner, Chair**

**Joseph Ferla**

**George Mathew, CPA**

**Christian DiCicco, Esq.**