May 1, 2013

In Re: Anna and Nicholas Tuti
Docket No: 14STMERZZ9927

Statement of Record

1. Nicholas and Anna Tuti (hereafter "Petitioners") filed a Petition for Appeal with the Tax Review Board on May 22, 2012 requesting review of The Philadelphia Streets Department billing for a refuse collection fee for the property at 4344 Main St. Philadelphia, Pa.
2. A public hearing before a Tax Review Board (TRB) Master was held on August 7, 2012. The decision of the Master, as ratified by the TRB, was to abate the interest and penalty accrued against the billing under petition.
3. Petitioners requested and were granted a rehearing before the full TRB.
4. A public hearing before the TRB was held on March 5, 2013. At the conclusion of the hearing, the TRB announced its decision to abate interest and penalty only.
5. Petitioners have appealed to the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioners are the owners of the property located at 4344 Main St. Philadelphia, pa.
2. This property is a multi-use building, with both residential and commercial use.
3. Mr. Tuti testified before the TRB that the property is both his primary residence and place of business. He uses part of the building for a hair cutting business to supplement his social security income.
4. Mr. Tuti requested an abatement of the full bill, including principal, interest and penalty amounts on 2 grounds. First, he does not put out any trash since he uses the hair clippings in his garden and takes any other trash to a property he owns in New Jersey. Second, payment of the fee would be a financial hardship.

Conclusions of Law:

The Philadelphia Code Chapter 10-717.1(2) states that"(t)here is hereby imposed on all owners of residential or commercial properties eligible for City curbside waste collection an annual fee of three hundred dollars ($300) per property for neighborhood sanitation and cleaning services, including the collection of refuse, waste and recyclable materials and related cleaning services…

Exemptions: The following are exempt from the fee:

(a)Collection from single-family dwellings;

(b) Collection from condominiums and cooperatives, as defined in subsection (1);

(c) Collection from a property in connection with which the property owner demonstrates, to the satisfaction of the Department, that it has in place one or

more private waste hauling contracts that provide for collection of the refuse, waste and recyclable materials generated at the property."

Mr. Tuti testified that this property is a multi use property and serves as both his residence and his place of business. Although this property may be his primary residence, the haircutting business he operates there, no matter how small in terms of physical space or revenues produced, makes this property subject to this tax.

The ordinance has very specific exemptions and Petitioners' property does not meet the requirements for any of them. Therefore the decision of the TRB with regard to the tax principal due was that the assessment was correct as issued and the petition denied.

The Philadelphia Code Chapter 19-1705(2) provides that "(u)pon 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."

It was the finding of the TRB that Petitioners met these standards imposed by The Philadelphia Code Chapter 19-1705(2). This refuse collection fee for commercial properties is a relatively new tax and as such may be subject to confusion as to who is required to pay it. While as a general rule, it is not to be assessed against a homeowner's primary residence, Petitioners in this case fall into the exception that causes their property to be subject to this tax as the building has a commercial use, however small.

Therefore, the decision of the TRB was to abate the interest and penalties accrued against the delinquent tax balance.

Concurred:
Nancy Kammerdeiner, Chair
Joseph Ferla
Christian DiCicco, Esq.
Milton Oates, CPA