April 11, 2012

In Re: Keystone Health Plan East
Docket Nos: 36BPREFZZ9786 and 9794

In Re: QCC Insurance Company
Docket Nos: 36BPREFZZ9785 and 9795

Statement of Record:

1. QCC Insurance Co. (hereafter referred to as "QCC" or "Petitioner(s)") filed with the Tax Review Board (hereafter "TRB") on October 30, 2009 Petitions for Appeal of refund denials by the City of Philadelphia Department of Revenue (hereafter "the City" or "Revenue") for Business Privilege Tax (BPT) for the years 2003 (TRB Docket No: 36BPREFZZ9795) and 2004 (TRB Docket No: 36BPREFZZ9785).

2. A public hearing before the TRB was scheduled for QCC for June 24, 2010 and continued at Petitioner's request.

3. Keystone Health Plan East (hereafter "KHPE" or "Petitioner(s)") filed with the TRB on October 30, 2009 Petitions for Appeal of refund denials by the City for Business Privilege Tax for the years 2003 (TRB Docket No: 36BPREFZZ9794) and 2004 (TRB Docket No: 36BPREFZZ9786).

4. A public hearing before the TRB was scheduled for KHPE for June 24, 2010 and the case was continued at the request of both parties.

5. A public hearing for KHPE was scheduled before the TRB for September 21, 2010 and the case was continued at the public hearing.

6. A status hearing for KHPE was held on October 28, 2010 at which time the parties agreed to a briefing schedule, to include the stipulated findings of fact presented to the TRB at this hearing. The case was then taken under advisement by the TRB pending submission and review of the briefs.

7. Pursuant to email correspondence dated December 28, 2010 the attorney for KHPE entered his appearance on behalf of QCC and requested the 4 cases represented by the TRB docket numbers captioned above be consolidated. There being no objection from the City's attorney the separate appeals filed by Petitioners were consolidated for purposes of any evidentiary hearings and review due to the similarity of facts and identical nature of the legal issues put before the TRB.

8. Following review of the submitted briefs on behalf of Petitioners and the City, on July 28, 2011, the TRB through its Executive Director, posed the following question to the parties: "What is the actual due date for the BPT under 19-2600 et

seq. and any corresponding regulations?" A jointly prepared response was received August 22, 2011 on behalf of the City and Petitioners. A joint follow-up response was received on October 17, 2011.

9. The TRB announced the following decision at a public hearing on December 29, 2011:
   The city shall issue a credit on each Petitioner's BPT account to the extent the overpayments identified on the amended returns resulted from the taxpayers' estimated payments. The taxpayers may not obtain a refund only a credit on their accounts.

10. The City filed appeals to the Court of Common Pleas on January 27, 2012 for these 4 TRB docket numbers related to QCC and KHPE.

11. Petitioners filed appeals to the Court of Common Pleas for these 4 TRB docket numbers related to KHPE and QCC on January 31, 2012

12 At the request of all parties, by motion dated February 29, 2012, all matters were consolidated for purpose of consideration by the Court of Common Pleas.

Findings of fact:

1. The Stipulations of Facts agreed to and submitted by the parties to this appeal are hereby incorporated by reference.

Conclusions of Law:
Petitioners appealed the decision of the Philadelphia Department of Revenue to deny their requests to have refunded Business Privilege Tax (BPT) overpayments for the years 2003 and 2004. These overpayments arose as a result of IRS adjustments to their 2003 and 2004 federal income tax returns.

The facts for each petitioner are not in dispute. Each petitioner filed timely BPT returns for the years in question. At the time of the filings or by the April 15th due date each petitioner remitted the amounts due for those tax years and the required estimated tax payments for the subsequent tax years.

When calculating the net income portion of their BPT liabilities, each petitioner elected to do so pursuant to The Philadelphia Code Chapter 192601(a)(2) using the Federal Taxable Income Method, also known as Method II.

Following IRS audits involving each petitioner and concluding on or about February 17, 2009, the IRS issued their Revenue Agent Reports (RARs) that reduced substantially the federal taxable income for these tax years for each petitioner.

Each entity then filed amended BPT returns for the years adjusted by the IRS and as required by BPT Regulation 205. Due to the reduced taxable income reported on these amended returns and the corresponding reduction of BPT liabilities, each Petitioner

requested a refund of the resulting substantial BPT overpayments. QCC requested refunds of $1,461,867 overpayment for 2003 BPT and $603,137 for overpayment of 2004 BPT. KHPE requested refunds of $268,238 for 2003 BPT overpayment and $4,206,696 for 2004 BPT overpayment.

In each year 2003 and 2004, Petitioners made substantial mandatory estimated payments for the subsequent year's BPT as required by The Philadelphia Code Chapter 19-2610. After the IRS audit results, Petitioners' payments were far in excess of Petitioners' actual tax liabilities, thus triggering the refund requests. By way of example, in April 2003, QCC made a mandatory estimated payment of $2,203,877. Following the IRS RAR and the filing of the amended BPT return, the actual BPT liability for tax year 2003 was $616,526. This reduction was not determined until the February 2009 RAR report. Therefore, when Petitioner filed its refund request in 2009, the request was beyond 3 years from both the filing of the return and the tax payment thus triggering the refund denial by the City.

The City denied these refund claims as beyond the statute of limitations set forth in The Philadelphia Code Chapter19-1703(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)

Petitioners argue that the amended returns filed after issuance of the RARs should be viewed as resetting the 3 year statute of limitation as this amended filing creates a new "due date" from which the statute of limitations should begin for the BPT returns.

However, in answer to the specific question posed by the TRB to the parties on July 28, 2011, asking them to define the "actual due date" for the BPT according to their reading of The Philadelphia Code Chapter 19-2601 et seq. and any applicable regulations, Petitioners agreed with the City that the BPT returns for the tax years in question "were due by April 15th of each year following the year for which the taxpayer did business in Philadelphia". No exceptions were noted or proposed.

And, further, in the follow-up response received on October 17, 2011, the parties jointly submitted:

> Business Privilege 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 is the due date for both filing of the BPT return and the due date for payment of the BPT. However, if an extension of time to file a federal tax return is obtained, the City will grant a similar extension of time to file a BPT return. There is no extension of time for the payment of the tax. The Petitioners

> herein, timely paid their BPT liability and timely filed by the extended due date their BPT returns.

Therefore, in applying this standard as set out by the parties, it was the decision of the TRB that refunds could not be granted because the filing of the BPT returns on their "actual due date" and concurrent remittance of the tax payments placed these refund requests outside the 3 year statute of limitations and therefore they were 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)

Petitioner QCC filed its 2002 BPT return in April 2003 and made a mandatory estimated payment in April 2003 that would be applied to their 2003 tax year BPT liability in April 2004. QCC filed their 2003 BPT return in 2004. The mandatory estimated payment made in 2002 was then applied to the BPT liability shown on this 2003 BPT return.

After the IRS audit, the 2003 liability was reduced retroactively. Therefore the estimated payment for 2003 created an overpayment in excess of the actual 2003 BPT liability as determined after the issuance of the RAR and completion of the required amended BPT return filed within 75 days of that RAR.

For the 2004 BPT liability, the same scenario occurred: along with the 2003 BPT return, Petitioner paid an estimated amount that was intended for the 2004 BPT liability that would be reported on the return due in April 2005. The RAR issued in 2009 also reduced Petitioner QCC's BPT liability for tax year 2004 thus creating an overpayment. To the extent that this overpayment was created by the estimated payment made in 2004 Petitioner is entitled to a credit.

Similarly, KHPE filed its BPT return for the tax year 2002 in April 2003 and made a mandatory payment for its 2003 BPT liability at that time. The RAR issued in 2009 significantly reduced its 2003 BPT liability thus setting up the scenario where that created the overpayment situation for the 2003 tax year A similar situation and corresponding overpayment occurred for the BPT tax liability for 2004. To the extent that any overpayment was created by the mandatory estimated payment, Petitioner is entitled to a credit.

The language in Section 19-2610 is clear. The Department is required to have regulations that provide for, inter alia, "credits to be granted on ***any*** overpayment of estimated tax payment" (emphasis added). The relevant import in the instant matter is that taxpayers shall receive credits when their estimated payments contribute to overpayments. Here, the Department did not issue credits to the petitioners for the overpayments as the result of the petitioners' estimated 2003 and 2004 tax payments.

By way of further explanation, it was clarified by TRB Chair Williams at the December 29, 2011 with the following example:

> For QCC 2003 it appears that the petitioner sought a refund of $1,461,867. The estimated payment made on April 15, 2003 was $2,203,887…(T)o the extent that the $2,203,887 in the estimated payments made on April 14, 2003 cover the $1.4 or $1,461,867 sought in refunds a credit shall be issued for that…(T)o the extent the estimated payments made include enough for a credit of the refund sought, then …the credit shall be granted. See December 29, 2011 Notes of Testimony, Page 9.

Therefore, it was the decision of the TRB that the petitioners were entitled to credits for "any" overpayments created as a result of the petitioners' estimated tax payments. And, as the stipulated Findings of Facts demonstrated that there were overpayments of estimated payments equal to or greater than the amount of the refunds sought, the TRB ordered credits be issued to Petitioners on each account.

Finally, because it determined that Petitioners were not entitled to actual refunds for the overpayments caused by the estimated payments based on 19-1703, the TRB ordered that the credits granted could not be reduced to cash refunds and, instead, were to remain on petitioners' accounts and be applied to satisfy the petitioners' later incurred tax liabilities.

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Concurred:
T. David Williams, Esq., Chair
Joseph Ferla
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Nancy Kammerdeiner