

March 7, 2011

In Re: Laszlo Majzik
Docket No: 36REINPZZ3464

Statement of Record:

1. Laszlo Majzik (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board on October 9, 2007 requesting review for Real Estate taxes for the property at 4375-85 Richmond St. Philadelphia, Pa.
2. A public hearing before a Tax Review Board Master was held on March 20, 2008. The decision of the Master, as ratified by the Tax Review Board was to deny the petition for the tax years 1998 to 2000, 2004, 2006, and 2007.
3. Petitioner requested and was granted an appeal before the full Tax Review Board.
4. A public hearing before the Tax Review Board was held on October 16, 2008 at which time the matter was taken under advisement pending receipt of affidavits from certain city employees regarding agreements and communications with Petitioner.
5. By letter dated March 16, 2009, the Tax Review Board requested letter briefs on the outstanding issues.
6. A public hearing was scheduled before the Tax Review Board for July 23, 2009 and continued at Petitioner's request.
7. A public hearing was held on January 28, 2010 following which the Board announced its decision to abate 75% of the accrued interest, 100% of the accrued penalty and provide 90 days to arrange installments.
8. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioner filed a petition regarding delinquent Real Estate taxes for the property at 4375-4385 Richmond St. Philadelphia, Pa., for the years 1998 through 2000, 2004, 2006 and 2007. Petitioner requested the TRB to determine that Petitioner had previously paid all balances due for all years prior to 1990 pursuant to an agreement that was completed in 1990, and that any payments made after that should be applied to the subsequent years as intended by Petitioner.
2. The tax principal due for the years under appeal was \$15,931.88, interest of \$4,284.93 and penalty of \$1,115.24 as of the TRB hearing date, lien charges of \$120 and legal fees of \$3,122.65 for a total due of \$24,574.70.
3. In 1990, Petitioner, through his representative, made arrangements to pay Real Estate taxes due at that time. Petitioner made 2 payments as required, in the amounts of \$8,479.08 and \$194.01. As requested, the payments were applied only to the principal amount due at the time, with the exception of the payment amount allocated to 1990, which was applied "across the board" to principal, interest, penalties and fees..
4. Petitioner showed letters from Petitioner's previous attorney and from the City of Philadelphia to support his position that an agreement was entered into that included a waiver of all balances and charges except tax principal and all payments were made. The letters did not spell out the terms of the agreement or the tax years covered by the agreement. There was nothing specific to indicate that adjustments or abatements were being applied to any of the delinquent charges.

5. In 1998, 1999 and 2000, Petitioner made payment that he intended to be used for those current year taxes. The funds were applied by the City to tax years 1984, 1985 and 1986 for interest, penalties and other remaining charges.
6. Petitioner testified that it was his understanding in 1990 that his payments would cover everything due on the property and the balance for years prior to 1990 would be \$0,
7. Petitioner's payments in 1990 were applied to tax principal only, leaving the interest and penalty balances.
8. The City provided an affidavit from Steven Sankey. Mr. Sankey is employed in the City of Philadelphia Tax Unit as a Tax Collection Coordinator. In 1990, his title was Tax Analyst II. In the affidavit, Mr. Sankey recalled discussions with Petitioner and his then attorney, Robert W. Maher with regard to the delinquent Real Estate taxes for 4375-85 Richmond St., among other tax delinquencies under discussion for settlement. Mr. Sankey states in his affidavit that he does "not now, nor have I ever, had any authority to abate or waive any real estate tax, interest, penalty, liens or legal fees..." and he specifically denies "ever making any agreement with Mr. Majcik or his representative to waive or abate any interest, penalty, liens or legal fees for years prior to 1990." Mr. Sankey states further that at his direction, the Department of Revenue applied the check to principal only for the years detailed in a letter sent by Mr. Maher.
9. There was no documentation to establish that the parties had entered into a formal settlement or payment agreement that included any abatements or waivers.

CONCLUSIONS OF LAW:

As the petitioning party, Petitioner bears the burden of proof to establish by substantial evidence that the assessment offered by the City is in error. Estate of Kuljian v. Philadelphia Tax Review Board, 111 Pa. Cmwlth 451, 533 A.2d 1135 (1987).

Petitioner failed to meet his burden of proof to establish that the City had agreed to waive any charges or delinquencies due for tax years 1990 and prior that were amounts above his actual payments. The position that he had an agreement to waive some or all of the interest, penalties and fees was directly disputed by the affidavit of the City representative with whom he claims to have made the agreement as outside the scope of his authority at that time and even to today.

Petitioner had no documentation that stated the terms of any agreement or payment plan, nor did the City. Petitioner had no first hand knowledge of any of the discussions or agreements because the matters were handled by a prior attorney. The documents that Petitioner had from this attorney were not specific as to what, if any agreement had been made and did not specifically state that interest, penalties or other fees or charges were being waived by the city in exchange for principal payments.

This Petitioner did demonstrate an ongoing attempt to resolve this matter and made substantial payments through the years. The Philadelphia Code 19-1705 provides the Board with the jurisdiction to 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.

The decision of the TRB was to abate 75% of the accrued interest and 100% of the accrued penalty with 90 days to arrange payments.

Concurred:

T. David Williams, Esq.
Joseph Ferla
LaVon Wells-Chancy, CPA