

December 7, 2012

In re: Nature Soy

Docket No: 35WRMERZW7044

Statement of Record:

1. Fenjin He, Vice-President of Nature Soy, Inc. (hereafter "Petitioner") filed a petition for Appeal with the tax review board on October 3, 2011 requesting review of a water/sewer bill for the property located at 912-24 Brown St. Philadelphia, Pa.
2. A public hearing was held before the Tax Review Board on January 26, 2012 and continued for the Water Revenue Bureau to provide information as to the status and condition of the meter that had been removed from the property.
3. A public hearing was held on April 26, 2012 following which the case was taken under advisement with the parties directed to meet within 15 days for settlement discussions, after which the Board would make a decision if no agreement was reached.
4. Having received no information from the parties that a settlement had been agreed to, on June 19, 2012, the Board issued its decision to adjust the principal amount due and reduce it to \$14,000 with petitioner to make payment arrangements within 120 days of the date of the adjusted bill.
5. The City of Philadelphia Water Revenue Bureau (WRB) filed a timely appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioner filed a Petition for Appeal requesting review of the Water Revenue Bureau billing for the property at 912-24 Brown St. Philadelphia, Pa. for the period May 22, 2000 through October 16, 2010. The principal amount and total due was \$148,150.74.
2. Petitioners use the property to manufacture tofu products.
3. They have been in the property for all the years in question. Water/sewer bills were paid when received through the years, which included usage amounts as recorded from the meter in the property.
4. The bills paid by Petitioner were from actual readings from the water meter and were not estimated.
5. In 2010, the Water Department went to the property to change the meter as part of routine maintenance. In the course of this meter change, the Water Department reported that its representative discovered that the meter that had been in the property throughout these years had the wrong size register on it. There was a one inch register on a one and one-half inch

meter. According to the Water Department, this register, which actually is supposed to record the amount of water going through the meter, was too small for the meter at the property and therefore was under-recording Petitioner's actual water usage.

6. At the time this discovery was made, Petitioner was not informed about it and was not shown the meter and register nor given any opportunity to request testing or analysis.
7. When notified that the register and meter in Petitioner's property were mis-matched, the Water Revenue Bureau recalculated Petitioner's usage for the 10 year time period using a multiplication table issued in 2001 by the company that provided the meters. This recalculation resulted in an assumed usage that was almost double what the meter readings had shown over the 10 year period. This adjustment was made in October 2010. This calculation assumed that Petitioner's business used water at substantially the same rate for the entire 10 year period.
8. Subsequently, Petitioner received the water/sewer bill in October 2010 showing an amount due of \$148,150.74, that covered the time period from when the meter was installed in 2000 through the time in October 2010 when the meter was removed and the error discovered by the Philadelphia Water Department. This amount due was over and above all the bills that Petitioner had paid each and every month as they had been received.
9. The account history provided by the WRB showed the actual usage amounts from October 2010 to the time of the TRB hearing, with a meter that was presumably functioning with the correct register, were higher than the usage that had registered on the earlier meter.
10. Petitioner testified that throughout the 10 year period his business had been growing and that since 2010 the business had added new product lines and an increase in water usage was to be expected. Therefore, the more current usage amounts did not confirm the WRB position that the increase in usage being registered by the new meter was proof that Petitioner had used more water during 2000 to 2010 than the meter had registered. In addition, an across the board calculation that assumed usage was at the same level for the entire 10 year period was not correct because it did not take into account that in the earlier years when sales were lower, water usage would have been lower as well. Petitioner's annual sales figures would be an indication of how much water would have been needed for their manufacturing processes.
11. This TRB hearing, on January 26, 2012, was continued to allow the parties to discuss a settlement based on the WRB offer to waive one-half of the bill, and also for the WRB to provide Petitioners with information as to what happened to the old meter and whether it was tested, and to explain how the usage was determined.
12. At the reconvened hearing on April 26, 2012, the City representative reported that the meter in question had been destroyed without any testing or evaluation. There was no evidence presented, either by testimony or documentation, to establish that the meter or register had been faulty or improperly installed.

13. It was Petitioner's position that as his business grew so did the company's water usage. By looking at the water usage as a percentage of sales, with 2011 as the base year, Petitioner provided the company's sales figures for every year back to 2000, determined its percentage in relation to the 2011 sales amount, and then showed a calculation of estimated water usage for each year consistent with the 2011 ratio of water usage to sales.

Petitioner then compared this estimate of the 10 year usage amount calculated based on sales to the actual usage charged to petitioner before the Water Department determined there was an incorrect register on the meter. The conclusion was an 18% difference in the 2 usage amounts that translated into a \$28,000 under payment by Petitioner for the 10 year period.

Conclusions of Law:

The City of Philadelphia Water Department Regulations §401.6 (c) provides that "(w)here the Water Department has determined the water meter to be defective, the Revenue Department shall determine the quantity of water used based on the usage for the periods prior to the meter becoming defective or by the type of premises and meter size." It was the city's position that this regulation provided the authority to revise Petitioner's bill based on the meter manufacturer's 2001 conversion table for the circumstance where a meter and a register are improperly matched at a property.

However, it was the conclusion of the TRB that the WRB did not establish that the meter was defective, assuming the mis-matching of a meter and a register fits the definition of a defective meter. There was no documentation that showed the meter and register to be mis-matched, or that they were tested for accuracy or that an analysis of any underreporting of water usage was undertaken. There was no testimony by anyone from the Water Department to tell how it was determined and substantiated that the meter and register were, in fact, not matched up properly. After 2 TRB hearings, it was finally determined that the meter and register had actually been destroyed and therefore an analysis or evaluation was not and could not be performed to determine the extent of any under reporting of usage.

It was the TRB decision that Petitioner met its burden of proof to substantiate that the estimated meter reading used by the WRB after the original meter was removed was not an accurate calculation of the actual amount of water used by Petitioners.

The WRB relied exclusively on a chart issued by the meter manufacturer that provided a single multiplier to determine the amount of under reporting of usage that would occur where a one inch register was fitted to a one and one-half inch meter. The WRB then used that multiplier for the entire 10 year period without any consideration for Petitioner's business fluctuations and business growth throughout those 10 years.

Petitioner provided its own calculations based on considerations tailored specifically to its own business activity and potential water usage throughout the time period. The TRB accepted his calculations showing an underpayment on his part of \$28,000.

In addition, this was an error that was solely the result of City error that could never have been recognized by Petitioners, and which went undetected by the City for 10 years. And when discovered, Petitioner was never directly notified so that he could have an opportunity to have the meter and register tested, or in some other way act to protect his interests and be sure the matter was handled correctly. His first notice was a bill in the amount of \$148,500 after 10 years of faithfully paying every bill the city sent.

Therefore, it was the decision of the TRB to hold the petitioner responsible for \$14,000 or ½ of the calculated underpayment while the city would bear responsibility for any remainder.

Concurred:

T.David Williams, Esq. Chair

LaVon Wells-Chancy

Joseph Ferla

Nancy Kammerdeiner

George Mathew, CPA