

15-17

April 18, 2015

IN RE: 5209 MARKET STREET, INC.

DOCKET NUMBERS: 36BPMERZZ7976, 36LSMERZZ9895

Statement of Record

1. Charles Weiner filed a Petition for Appeal of Business Income and Receipts Tax (BIRT) and Liquor Sales Tax (LST) assessments for tax years 2010 to 2012 for the business known as 5209 Market Street, Inc. (hereafter "Petitioner"). This petition was filed with the Tax Review Board (TRB) on March 18, 2014.
2. A public hearing before the TRB was scheduled for July 22, 2014. Petitioner requested and was granted a Continuance for completion of a Philadelphia Police Department investigation.
3. A public hearing before the TRB was scheduled for October 30, 2014 and continued at that time at the City's request.
4. A public hearing before the TRB was scheduled for January 29, 2015. At the conclusion of this hearing, the matter was taken under advisement by the TRB.
5. A public hearing was scheduled for March 10, 2015 by the TRB for the announcement of its decision in this matter. The decision announced at that time was to grant the petition and abate all outstanding principal, interest and penalties.
6. The City of Philadelphia filed an appeal to the Court of Common Pleas.

FINDINGS OF FACT:

1. The property located at 5209 Market Street, Philadelphia, PA was the location of a small bar, with four tables and nine seats at the bar, for all tax years in question.
2. The establishment sold beer and alcoholic beverages to retail customers.
3. This property was located in area under the Market Street Elevated Train ("EL") where SEPTA was doing large scale renovations for an extended period of time, including these tax years. This construction impacted heavily on all businesses along this corridor of Market Street where access to these local businesses was severely restricted for an extended time.
4. Charles Weiner, the property owner, testified that once the EL construction began, the business at the bar dropped dramatically. When this happened, he decided to lease the business to a third party to run. This arrangement included the use of the establishment's Liquor License.
5. After turning over the business and its management to his tenant, Mr. Weiner stepped away from regular oversight of the business activity at that location, with the exception of regular attendance at meetings with his accountant and the tenant so that required tax returns could be prepared using the sales and expense information provided by the tenant.
6. Petitioner's accountant testified that at his regular monthly meetings with the tenant, the tenant would verbally provide the data as to sales, expenses, purchases,

etc., which he would put into a spreadsheet and use for preparation of all tax returns which Mr. Weiner would sign and file. All taxes due as per these tax returns were paid.

7. Petitioner was summoned by the City of Philadelphia Department of Revenue for audit. He and his accountant responded as requested.
8. At the audit, Petitioner and his accountant were presented with information that the City received from the Pennsylvania Liquor Control Board (PLCB).
9. This PLCB information detailed liquor purchases attributed to Petitioner's liquor license that went well beyond the purchases the tenant reported as part of its business activity.
10. When presented with the LCB purchasing data, Mr. Weiner concluded that his liquor license was being used fraudulently i.e. to make wholesale purchases that were then not being sold at the 5209 Market Street bar as part of its regular business activity.
11. Petitioner contacted the Philadelphia Police Department and an investigation was begun to determine what criminal activity, if any, had occurred with the illicit use of the liquor license.
12. Mr. Weiner testified that he did not make any liquor purchases or have any involvement with running the business during the years in question. He acted only in a landlord capacity.
13. Mr. Weiner had no knowledge as to who or how many people may have had access to his liquor license information and were making purchases with it.
14. Mr. Weiner also testified that based on his knowledge of the business, and the virtual shutdown of the area during the SEPTA construction, a bar of the size of the 5209 Market Street location could not have sold the volume of alcohol which the LCB records were showing as purchased each year.
15. The PLCB sales information for 2012 showed _____ in liquor purchases of _____ bottles of liquor. Purchases were made on _____ days in 2012 or virtually every weekday of the year.
16. Petitioner's tax returns for 2012 reported _____ in liquor sales.
17. Mr. Weiner testified that to the best of his knowledge the tax returns as originally filed contained the correct information as to how much liquor was purchased and sold for each year.
18. Once he learned of the PLCB purchase information and determined that the license had been misused, Mr. Weiner turned the liquor license back to the PLCB to hold for the duration of the police investigation.
19. At the time of the TRB hearing, there had been no conclusion to the police investigation.
20. The City auditor used the PLCB purchasing information to make an additional assessment for each tax year under audit. A standard mark up rate was assumed and calculated as a new sales figure, much higher than Petitioner had reported on his federal and local returns, for which both LST and BIRT were assessed.

Conclusions of Law:

The TRB decision to grant the petition and abate principal, interest and penalties was based on:

- a. the credible testimony of the business owner that fraud had occurred with regard to the use of the Liquor License for purchases well beyond what had actually been sold by the business. A police report had been made and an investigation was ongoing to determine who had misused the license.

- b. information as to the impact on the business activity and the ability to carry on any business at all as a result of the major SEPTA construction and its impact on access to the building; and

- c. the physical size and capacity of the property to accommodate sufficient business activity to use the amount of liquor that the city auditor was claiming had been sold.

Petitioner had timely filed and paid all tax amounts due for BIRT and LST based on his tenant's information of purchases made for and business actually transacted at the 5209 Market St.

The city's estimate of sales and assumed retail pricing based on national standards could not be justified under the real experience for a merchant in a depressed neighborhood in Philadelphia virtually shut down by a well documented and publicly known city construction project that harmed small businesses up and down that portion of the Market St. corridor.

In addition, the small size of this establishment and minimal number of seats for patrons would have been hard pressed to support the volume of purchases and number of drinks sold that the city was estimating beyond Petitioner's actual tax return totals.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

George Mathew, CPA

Christian DiCicco, Esq.