

**March 5, 2019**

**IN RE: Wissahickon Apartments, LLC**

**TRB Docket No. and Associated Property:**

- **36RTREFZZ9974-5215-31 Schuyler Street, Philadelphia PA**

**Statement of Record:**

- 1) **Wissahickon Apartments, LLC (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board on September 19, 2017. The Petitioners requested a review of Department of Revenue's July 31, 2017 denial of the realty estate transfer tax refund requested by Petitioner.**
- 2) **Upon receiving and processing the petition, the case was scheduled for a hearing on January 23, 2018.**
- 3) **At the conclusion of the hearing, the Tax Review Board requested additional information and held the case under advisement for additional review.**
- 4) **On September 20, 2018, the Tax Review Board denied the petition.**
- 5) **Petitioner has filed an appeal to the Philadelphia Court of Common Pleas.**

**Findings of Fact:**

- 1) **On October 6, 2016, 5215-31 Schuyler Street was sold from Courtney Craig Smith, Jr. and the Dabney Corporation to Arco Properties, LLC. Arco Properties then placed the property in an entity, Wissahickon Apartments, LLC.**
- 2) **The total purchase price for the property was \$3,220,000.00. The Sales Agreement specified the total purchase price was allocated in the following way: \$250,000.00 consideration for the land deed and \$2,970,000.00 consideration for the purchase of the ground lease.**
- 3) **At closing, the lease was terminated, and the Buyer acquire the entire property; ground lease and land deed.**
- 4) **The City assessed a realty transfer tax of \$99,820.00 on the total amount paid in consideration for the property, \$3,220,000.00. (\$7,750.00 for land deed; \$92,070.00 for interest in ground lease).**
- 5) **Petitioner paid the amount due and then requested a refund for the consideration paid to the City for the interest in the ground lease.**

**Conclusions of Law:**

**Petitioner bears the burden of proof to establish by substantial evidence that the City's assessment is incorrect. Ernest Renda Construction Co. Inc. v. Commonwealth, 94 Pa. Commonwealth Ct. 608, 504 A. 2d 1349 (1986).**

**In Philadelphia, the realty transfer tax applies to the sale or transfer of real estate located in city of Philadelphia. The tax becomes payable when a property deed is recorded and is measured by the consideration paid at the time of the sale or transfer. The Philadelphia Code, Chapter 19-1402(14)(a).**

The Petitioner argues that the City realty transfer tax assessment for the sale of 5215-31 Schuyler Street was incorrect. First, the Petitioner asserts that the imposition of realty transfer tax for the ground lease was improper due to the language found in Section 19-1402(12)(b),

*(b) Any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term of the grant of a right to extend the term by renewal... or possessory interest under a lease or occupancy agreement for a term of thirty (30) years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.*

Specifically, the Petitioners note Mr. Smith conveyed his ground lease interest to Wissahickon with a remaining term of less than 30 years; therefore a non-taxable lease, indicating that no realty transfer tax is due.

Secondly, the Petitioner asserts that the City's tax assessment "collapsed" two separate and distinct transactions. Each transaction was made with specific and separate consideration, which should have resulted in only realty transfer tax for the land lease as the ground lease was excluded. Prior ownership history reveal that the property had been separated between the fee and leasehold; as Mr. Smith and the Dabney Corporation acquired them at separate times; and despite conveying both interests in the same sales agreement, the transactions should not be merged and taxed for the consideration paid for both interests.

The City asserts that the realty transfer tax was imposed on the value of all the interest of the real estate transferred in the sale. Specifically, the City notes that "how the parties allocated this price doesn't matter to the City...the sales price is what the buyer paid at the end of the day. And that's what this was. That's how you compute transfer tax". (Hearing transcript, pg. 24-25, 19-10). The Sales Agreement conveyed both interests to the Wissahickon, with consideration, and terminated the lease at closing. Therefore, Wissahickon now owns the land and building outright, after paying consideration of 3.2 million; the taxable amount under the realty transfer tax. Additionally, the City position reinforces the need to prevent circumvention of the payment of realty transfer tax on the total value of interests in real estate transferred by a Sales Agreement.

Therefore, the decision of the TRB was to deny the petition for appeal of refund denial.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Gaetano Piccarelli, Esq.

George Matthew

Ryan Boyer