

May 31, 2021

IN RE: Murphy, Jerry

Docket No: 36UOMERZZ9279

Statement of Record:

- 1) Jerry Murphy, MD (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board ("TRB") on August 2, 2017. The Petition requested a review of a delinquent Use and Occupancy Tax bills assessed by the Philadelphia Department of Revenue from 2014- 2017.
- 2) The Petitioner is represented by his attorney Patricia Coates, (hereafter, "Petitioner's Attorney").
- 3) A public hearing before the Tax Review Board Master was held on November 8, 2017. Petitioner's Attorney requested a continuance which was granted and rescheduled for January 12, 2018.
- 4) At that hearing, the Master continued it for 60 days for the Department of Revenue to investigate the Petitioner's address.
- 5) The case was rescheduled for May 16, 2018. The hearing Master then granted the petition.
- 6) The City requested an appeal of the Master determination on May 31, 2018.
- 7) A public hearing was then scheduled before the Tax Review Board on December 6, 2018. The Petitioner's Attorney requested a continuance, and the hearing was rescheduled to July 9, 2019.
- 8) The Petitioner's Attorney requested another continuance which was granted and rescheduled to February 11, 2020.
- 9) After the hearing on February 11, 2020, the TRB held this matter under advisement for the City to provide "any information on the U&O for "7700A Stenton Avenue" (Notes of Testimony, Pg.38, Ln.10-12). Additionally, the Board requested the Petitioner to provide "everything that the taxpayer has concerning the period the period from 2014 to 2018 for the premise he was renting. And so you need to identify what the premises was that he was renting and who that was being rented from and if there were changes during that time periods that were covered by each entity" (Notes of Testimony, Pg. 36, Ln. 17-26).
- 10) The TRB received the requested information from the City on February 28, 2020. The TRB did not received additional information from the Petitioner.
- 11) On December 3, 2020, the TRB denied the petition.
- 12) Petitioner has filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Facts:

- 1) Petitioner operated a medical practice in the City of Philadelphia, Pa.
- 2) According to the City representative, the Petitioner was billed for the Use and Occupancy Tax as a tenant from January 1, 2014 to July 31, 2018. At the time of the hearing the unpaid balance totaled _____ principal of _____, interest of _____ and penalties in the amount of _____.
- 3) Chestnut Hill Associates, LP, which both the City and the Petitioner agree was the Petitioner's landlord during the period in question, filed Use and Occupancy returns for the property of 7650 Crittenden Street, Philadelphia Pa. Chestnut Hill Associates reported that Petitioner was their tenant and was delinquent in the years 2014 to 2018.

- 4) The Department of Revenue generated bills and mailed them to the Petitioner's home address, 500 Martins Lane, Dresher Pa.
- 5) During the hearing, the exact address of the Petitioner's practice was in dispute.
- 6) The Petitioner testified that his medical practice was located at 7700A Stenton Avenue, Philadelphia Pa.
- 7) The City alleged that the Petitioner's official practice address was 7650 Crittenden Street, Philadelphia, Pa.
- 8) The Petitioner also provided a lease document entered into from September 1, 2009 to December 31, 2018 for the property on 7800 Stenton Ave., Suite 100, Philadelphia Pa between landlord Chestnut Hill Associates, LP and Petitioner.
- 9) This lease, while not dated, noted an assignment from landlord Chestnut Hill Associates, LP to Chestnut Hill Owner, LLC and the tenant as Dr. Jerry Murphy.
- 10) In order to have clarification on such an important fact to the case, the Board requested clarification from each party.
- 11) The Board reviewed the additional information submitted by the City, specifically the affidavit from April Floyd, a property evaluator at the Philadelphia Office of Property Assessment, ("OPA") wherein she attested that 7700A Stenton Ave. is not an official address in the OPA system.
- 12) The official address, according to Office of Property Assessment, of the property wherein Petitioner occupied and used as his business is 7650 Crittenden Street, Phila Pa.

Conclusion 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).

The Philadelphia Code, Section 19-1806 imposes the Use and Occupancy Tax on the commercial use and occupancy of a property. Section 19-1806(2)(a), assesses the taxes on the actual user or occupier of the real estate. Further, under Section 19-1806(5)(b), each landlord or person authorized to collect rentals shall collect the proper proportion of the users' tax and pay that total tax due to the City. Failure of the tenant to pay the Use and Occupancy Tax to the landlord, the landlord shall notify the City by noting the tenant's failure in their returns.

Per City records, Chestnut Hill Associates, LP filed returns, each year from 2014 to 2018 for Business Use and Occupancy Tax for the property at 7650 Crittenden Street, Philadelphia, Pa. Specifically, they noted the Petitioner, Dr. Jerry Murphy as a delinquent tenant. The City then sent bills not to the property address but to the Petitioner's home address.

While Petitioner's argument regarding the which address should be assessed the Use and Occupancy Tax is fair; considering that his office address of 7700A Stenton Ave is not the one he is being assessed under; the Petitioner failed to provide evidence in the form of receipts to the landlord, agreements regarding payments of use and occupancy tax, and any other probative information that Board could have used to determine whether the assessment was valid. The City's additional documentation, further proved its assessment, that the official address of property was 7650 Crittenden Street, leaving the Board to only deny the petition. The Petitioner failed to meet its burden.

Concurred:

Nancy Kammerdeiner, Chair

Ryan Boyer

Gaetano Piccirilli, Esq.

George Matthews