

July 27, 2022

IN RE: Lootsrab, LP

TRB Docket No.: 14STMERZZ6350- Property: 163 N. 2nd Street, Philadelphia, PA

TRB Docket No.: 14STMERZZ6349-Property: 165-67 N. 2<sup>nd</sup> Street, Philadelphia, PA

Statement of Record:

- 1) Lootsrab, LP (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board("TRB") on February 1, 2021. The petition requested a review of the bill issued by the Department of Revenue for the refuse tax assessed on the property at 163 N. 2nd Street, Philadelphia, Pa, with corresponding account ending in -4500 from 2015 to 2022 and the refuse tax assessed on the property at 165-67 N. 2<sup>nd</sup> Street, with corresponding account ending in -4610.
- 2) The Petitioner filed petitions for review for these two accounts and corresponding bills on February 1, 2021. The petitions were accompanied with bills dated May 2020; as such they were considered late and approved after Nunc Pro Tunc consideration by the Tax Review Board's Chair.
- 3) A public hearing before the Tax Review Board at the Master level was scheduled on June 16, 2021. After hearing the evidence, the hearing officer denied the petition.
- 4) The Petitioner requested an appeal of the Master level decision on July 13, 2021. A hearing before the Tax Review Board was scheduled for March 31, 2022.
- 5) After hearing evidence, Tax Review Board denied the petition.
- 6) Petitioner has filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Facts:

- 1) Petitioner is the owner of properties at 163 N. 2nd Street and 165-67 N. 2<sup>nd</sup> Street. Both properties are considered commercial and are a combination of retail and office space.
- 2) The City billed the Petitioner for the refuse fee on both properties from 2015 to the current year. The City attested that the amounts due and owing on both properties are the Principal Amount of \$2,800, interest in the amount of \$999 and Penalties in the amount of \$1,542.52; for a total amount due of \$5,341.52 on each property. (Notes of Testimony; Pg. 3, Ln. 9-11).
- 3) Petitioner asserts that the refuse assessment for the years 2015-2022 was incorrectly assessed as "10 years ago we appealed, 10 years ago the [Tax Review] Board gave us the exemption. We found out that the City was billing us again, and we wrote letters, and we said, look, you put us through the difficulty before, we be granted the exemption, and the City said, sorry, we can't help you. You'll have to file another appeal". (Notes, Pg. 7, Ln. 5-12).
- 4) Dated March 12, 2014, the Tax Review Board heard granted petitions for 163 N. 2nd Street and 165-67 North 2<sup>nd</sup> Street for refuse tax appeals for the years 12/31/2011 to 12/31/2014. (Exhibit A-3)

- 5) Petitioner asserted that he doesn't use the City's trash collection service and rather, "he's got his own delivery trucks, that they bundle all of their cardboard, and that the minimal waste that isn't recyclable cardboard, they dispose of at the transfer station as well. It's just a form a torture that the City doesn't grant the exemption to a property owner who already successfully appealed this to this Board in the past." (Notes, Pg. 8, Ln. 4-10).
- 6) The City asserts that there is "no exemption provided for self-hauling in the code regulations". (Notes, Pg. 5-6, Ln. 23-1).

Conclusion of Law:

Under Article 3 of the Tax Review Board Regulations, a Petition for Review "shall be filed by any taxpayer who is contesting any decision or determination relating to his/her liability for any unpaid money or claim collectible by the Department of Revenue for or on behalf of the City or School District of Philadelphia". At the hearing, the 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 this matter, the City assessed the Petitioner for both properties under The Philadelphia Code Chapter 10-717.1 the curbside waste collection fee, otherwise known as the Refuse Collection fee.

**10-717.1. Eligibility for Municipal Collection and Fees for Neighborhood Sanitation and Cleaning Services.**

...

***(2) There is hereby imposed on all owners of residential or commercial properties eligible for City curbside waste collection an annual fee of three hundred dollars (\$300) per property for neighborhood sanitation and cleaning services, including the collection of refuse, waste and recyclable materials and related cleaning services. Upon a determination by the Department that costs of neighborhood sanitation and cleaning services justify an increase in the fee, the Department may increase the fee, as appropriate, by regulation.***

***Exemptions: The following are exempt or partially exempt from the fee:***

***(a) Collection from single-family dwellings;***

***(b) Collection from condominiums and cooperatives, as defined in subsection (1);***

***(c) Collection from a property in connection with which the property owner demonstrates, to the satisfaction of the Department, that it has in place one or more private waste hauling contracts that provide for collection of the refuse, waste and recyclable materials generated at the property;***

***(d) Collection from a duplex (two-family dwelling) in connection with which the property owner demonstrates, to the satisfaction of the Department, that***

***the owner resides in one of the living units, provided that the exemption shall apply to fifty percent (50%) of the fee imposed pursuant to subsection (2). 188***

***(3) The Department may establish regulations to implement this Section, including regulations establishing additional eligibility for curbside collection and regulations providing for interest and penalties for late payment and non-payment.***

***(4) The provision of false information to the City in an effort to demonstrate private service shall (a) constitute a violation and subject the property owner to penalties as set forth in this Chapter; and (b) make the property owner liable for the annual fee.***

During the hearing, the Petitioner narrowed the scope of issues to two main arguments. The first is that the Petitioner's properties should be considered exempt from the City refuse tax assessment. Specifically, while the Petitioner's properties are mixed use commercial spaces, they do not use or participate in the City's sanitation program and rather "self-hauls" its trash. The Petitioner's testimony describes a situation where very little trash is created from the business. "[W]e don't produce much trash. Most of our - - that we produce is all recyclable cardboard." (Notes of Testimony; Pg. 12; Ln. 17-19). The trash in turn is loaded on the Petitioner's own trucks and then deposited at a contracted disposal service.

The Petitioner's description of the trash on the properties however, does not fall in the enumerated exemptions prescribed in 10-717.1(2), *Subsections A-D. Subsections, A, B, and D* generally excludes commercial properties. *Subsection C* requires the owner to demonstrate "to the satisfaction of the Department, that it has in place one or more private waste hauling contracts that provide for collection of the refuse, waste and recyclable materials generated at the property". The Petitioner submitted a request for exemption, explaining that they handle the disposal of all the trash created from their business. However, "they didn't submit the contract agreement with the private hauler so it was denied". (Id.; Pg. 15; Ln.19-20).

The Board agrees with the City that the Petitioner's description of the disposal of trash on their properties, "self-hauling", does not fall into an exemption in the Code. The City's assessment of the refuse tax on the Petitioner's properties and subsequent denial of their exemption request was correct.

The Petitioner's second argument was that the Board's 2014 decision to grant the petition for the years 2011 to 2014 created a specific exemption for the Petitioner that they relied on and should be applied every year. The Petitioner asserts, "So 10 years ago we appealed, 10 years ago the Board gave us the exemption. We found out that the City was billing us again...the City said, sorry, we can't help you. You'll have to file another appeal. So we are here again, making the very same arguments with the same evidence". (Id.; Pg. 7; Ln.5-14).

While the Board understands the Petitioner's position, the Board does not believe it is bound by its prior decision to grant the Petitioner's petition nor that it created "an ongoing exemption for self-hauling". (Id.; Pg. 20; Ln.18). The Board finds that their 2014 decision was limited to the years at question and "[t]hey only provided for it to cover that period". (Id.; Pg. 21; Ln.13-14).

Additionally, in the Board's reading of the Code, the Refuse Collection fee is not *just* the collection of trash but also "cleaning services" that City provides. Trash collection is not the only service included in the fee under 10-717.1 and should be considered as a part of why the Petitioner should be assessed the fee.

The decision of the TRB was to abate the penalties.

Concurred:

Nancy Kammerdeiner, Chair

Paula Weiss

Dominique Ward, Esq.