

December 27, 2022

IN RE: Speech, Herbert

**Docket No: 36BPINPZZ7376
36NPMERZZ8712**

Statement of Record:

- 1) Herbert Speech (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on April 16, 2021. The Petition requested a review of a delinquent business income and receipts and net profit tax bills assessed by the Philadelphia Department of Revenue on March 19, 2021 due to an audit.
- 2) The Petitioner then requested an appeal before the full Tax Review Board and it was scheduled for August 3, 2021. The City of Philadelphia and Petitioner requested joint continuance and it was granted. A new hearing date of January 6, 2022 was scheduled. The Petitioner again requested a continuance, which was granted and rescheduled for August 18, 2022.
- 3) The Petitioner then requested another continuance, noting the need for additional time to prepare. The Board denied the request and the hearing proceeded.
- 4) After hearing the evidence and considering the testimony on August 18, 2022, the Board denied the petition.
- 5) Petitioner has filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioner filed a Petition for Appeal requesting the TRB find the audit conducted in March 2019 by the Department of Revenue inaccurate and waive the interest and penalty accrued against the resulting delinquent Business Income and Receipts Tax ("BIRT") and Net Profit Tax ("NPT").
2. At the time of the hearing, the amounts due and owing for the years 2014 to 2018 for BIRT is _____ of tax principal, _____ of interest, _____ of penalty for a total of _____. For NPT, the amount due for the years 2014-2018 is _____ or interest, _____ for a total of _____.
3. Petitioner testifies that he is a master electrician and home improvement contractor holds various licenses in Pennsylvania, City of Philadelphia, Bensalem Township, Lower Merion Township, Cheltenham Township, Delaware, and New Jersey.
4. Petitioner filed tax returns each of the years in question, but failed to report any BIRT or NPT taxes on his _____. Petitioner did report rental income for those years.
5. Mr. Faoud Ali, a Department of Revenue, conducted the audit. He testified that he requested the Petitioner provide, "standard documents that we need to conduct audits. Since the taxpayer was a small business and he was in a cash business, we asked for bank statements...sale rewards... [and] purchase journals for all his expenses." (Notes of Testimony; Pg. 34; Lns. 1-10).
6. Mr. Ali also explained, he asked the Petitioner for "a list of the customers so this way we can identify who is in Philadelphia, who is out of Philadelphia. And we asked for to get samples of invoices". (Id.; 15-20).

7. Mr. Ali described the Petitioner response to the audit request as “in the very beginning, Mr. Speech did not cooperate and then after a while sent us some paperwork. (Notes of Testimony; Pg. 35; Lns. 1-4). Mr. Ali testified, “I received bank statements, I received vendor invoices, and I received a business—American Express credit card statement for the years ’14 and ’15... I did not receive the sales journals or purchase journals. I did not receive any invoices. Mr. Speech claimed that he didn’t have any copies of any invoices, customer invoices”. (Id.; Pgs. 35-36; Lns. 22-7).
8. Based on the documents he received, including the Petitioner’s federal tax returns and bank statements, Mr. Ali explained he “took the number exactly from the bank—the total bank statement to the gross receipts” (Notes of Testimony; Pg.50; Lns. 12-14), and gave credit for expenses and other credits and created a spreadsheet with the total amount due. See City Exhibit).
9. Additionally, Mr. Ali explained that due to the lack of information from the Petitioner regarding expenses, Mr. Ali “did some research online, and the electrical work is more labor-intensive work...I made a deduction for much more than the expenses you gave me”. (Notes of Testimony; Pg. 65-66; Lns. 14-3.)
10. Petitioner and his witness/wife, Mrs. Kathy Speech, testified that they believe they cooperated with the audit and provided the documents that Mr. Ali required.
11. The Board reviewed the evidence and denied the Petitioner, noting “Petitioner’s failure to meet the burden of proof, that the re-audit was inappropriate”. (Notes of Testimony; Pg. 74; Lns. 13-15).

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 Board finds that the Petitioner failed to meet the burden that the audit conducted by the Department of Revenue was incorrect or inaccurate. The City’s witness, Mr. Ali testified that he made multiple attempts to gather all standard documents to conduct an audit and even after the audit, attempted to have an audit conference to review the findings. Specifically, explaining that “he did not give me any invoices or sales journals to break down his income between in and out of Philadelphia, otherwise I would have used that”. (Notes of Testimony, Pg. 63, Lns. 20-23). In fact, the Board finds that the audit conducted by Department’s auditor estimated the BIRT and NPT in a light most favorable to Petitioner, over-estimating his expenses--- estimating based on the normal business practices of electricians and not on the documents Petitioner provided. Additionally, while the Petitioner provided documentation of the multiple jurisdictions he is licensed to do business, he failed to provide any evidence or documentation that the income he did receive, as evidence in his federal tax return, was not done in Philadelphia during the years in question.

Concurred:

Dominique Ward, Esq., Chair

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