

October 23, 2019

IN RE: Tien Phat Frontier Corporation
DOCKET NO: 36BPINPZZ6446
36LSMERZZ9832

STATEMENT OF RECORD:

1. Tien Phat Frontier Corporation (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board on May 18, 2017 requesting review of an audit assessment conducted by the City of Philadelphia on March 23, 2017 for the Business Income and Receipts Tax for the years 2009-2012 and the Liquor Sales Tax for the years 2009-2012.
2. After several continued hearing dates at the requests of the parties, a public hearing was held before the Tax Review Board on March 14, 2019. At the conclusion of this hearing, the matter was taken under advisement by the Tax Review Board.
3. On June 13, 2019, the Tax Review Board announced the following decision:

Petitioner's Appeal for the Business Income and Receipts Tax for the years 2009-2012 and the Liquor Sales Tax for the years 2009-2012 is DENIED. Furthermore, Petitioner must enter into a payment arrangement within 60 days.

4. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner was a restaurant, banquet, catering and dance hall located at 612 Washington Avenue in Philadelphia, PA. They catered social affairs such as weddings and fundraisers.
2. Aiden Le, the son of the owner of the business during the tax years in question, testified that the average weekly revenue for alcohol retail sales on a typical weekday was between ~~_____~~.
3. Petitioner did have a Pennsylvania liquor license but Mr. Le testified that the majority of the time, the patrons bring their own alcohol.
4. Petitioner filed a Petition for Appeal with the Tax Review Board on May 18, 2017 requesting review of an audit assessment conducted by the City of Philadelphia on March 23, 2017 for the Business Income and Receipts Tax for the years 2009-2012 and the Liquor Sales Tax for the years 2009-2012.
5. The assessment removed the Business Income Receipt Tax liability but assessed additional Liquor Tax for the years 2009 through 2012.
6. The Liquor Tax principal for the years 2009 through 2012 was ~~_____~~ with interest of ~~_____~~ and penalty of ~~_____~~, as of the Tax Review Board hearing date, for a total of ~~_____~~.

7. The City auditor, Marcus Born testified as to how he arrived at the assessment for the Liquor Sales Tax (Exh. C-3). He testified that he reviewed Petitioner's Federal Tax returns, balance sheets, ledgers, and Sales Tax Returns.
8. Mr. Born testified that Petitioner did not provide bank statements or an income report, so he determined Petitioner's gross receipts based off their U.S. Income Tax Return for an S Corporation (Exh. C-5).
9. Mr. Born testified that he completed a Pennsylvania Sales Tax Report analysis (Exh. C-6) based on Petitioner's Sales Tax Reports which consisted of monthly Sales Tax filings provided by Petitioner for the years 2009-2012.

CONCLUSIONS OF LAW:

1. The Business Income and Receipts Tax was removed after the second audit assessment was conducted. Therefore, the subject of the Tax Review Board decision was primarily directed to the Liquor Sales Tax for the years 2009-2012.

2. Liquor Sales Tax Assessment

The Liquor Sales Tax is authorized pursuant to The Philadelphia Code Chapter 19-1805 on behalf of the School District of Philadelphia. The tax is imposed on "sales at retail in the District of liquor and malt and brewed beverages which are sold or dispensed...by any hotel restaurant, or club or other person licensed by the Commonwealth of Pennsylvania to sell or dispense liquor or malt or brewed beverages." (Code §19-1805(2)).

A "sale" is defined as "any transfer at retail for consideration in any manner or by any means whatsoever of liquor and malt and brewed beverages, but the term shall not include any transaction which is subject to tax by the Commonwealth of Pennsylvania under the Tax Reform Code of 1971. (Code §19-1805(d)). Neither party contended that the transactions involved in this matter were subject to tax under the Tax Reform Code of 1971. Petitioner admitted that sales or transfers of liquor and malt and brewed beverages were part of Petitioner's business.

"The total consideration, in any manner or by any means whatsoever, for the sale/transfer at retail defined in section 101(h), of liquor and malt or brewed beverages in fully taxable. In a situation such as Petitioner's, where one price includes both liquor and non-liquor sales, "an allocation of the price must be made to reflect the proper retail sales price attributable to the liquor and malt or brewed beverages." Liquor Sales Tax Regulations §102(b).

Petitioner put forth several arguments to challenge this assessment. First, Petitioner argues that it is not a typical restaurant with a liquor license as the majority of its income was derived from privately catered events. Petitioner's primary argument is that the amounts for the liquor tax for 2009 through 2012 were not based on Petitioner's tax returns.

It is the responsibility of the vendor to maintain appropriate books to document any liquor sales and to differentiate taxable from non-taxable sales in its books and records. Regulations Section 301(d). While Petitioner admitted to liquor sales, it did not have any receipts to show the cost or sale of the liquor and its records did not document the purchase price. The City's auditor used only the documentation provided by Petitioner's accountant to determine Petitioner's Liquor Sales Tax liability.

The tax is to be collected from the purchaser at the time of the sale and remitted to the Department of Revenue. Petitioner should have collected this tax from its customers when the sale of liquor was included in the services provided by Petitioner. Having failed to do so, Petitioner is liable for the tax that should have been collected. Regulations Section 301(b).

Concurred:

Nancy Kammerdeiner, Chair

Gaetano Piccirilli

Ryan Boyer

George Mathew