

27 Summ. Pa. Jur. 2d Taxation § 23:67 (2d ed.)

Summary of Pennsylvania Jur  
July 2016 update  
Taxation  
Chapter 23. Pennsylvania Tax Administration

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III. State and Local Tax Administration Issues  
C. Taxpayer Defenses and Remedies

[Topic Summary](#) [References](#)

§ 23:67. **Abatement** of interest and **penalties**

Because an insurance company taxpayer had a meritorious argument that it was not subject to Philadelphia's Business Privilege tax, **penalties** should have been **abated**.<sup>1</sup> The court remanded to the court of common pleas for a determination whether interest should also be **abated** in whole or in part. The panel directed the lower court to determine whether the interest component of the assessment was reasonable or unreasonable under the circumstances, citing *Nine Penn Center Associates*.<sup>2</sup> The panel rejected as unproven the assertion by the City that the taxpayer acted recklessly in failing to report taxable receipts.

In *Eat'n Park Restaurants*,<sup>3</sup> the court sustained the imposition of CNI Tax on the business trust but reversed the imposition of **penalties** because the taxpayer did not refuse to make any report nor did it knowingly make any false report.<sup>4</sup> It was not material to the statutory standard that the court disagreed with the position taken by the taxpayer on its return that it was not subject to tax.

**Penalties** and interest on the nonpayment of real estate tax should be calculated on the assessed value as finally determined, not on the amount of the original assessment by the assessment board.<sup>5</sup> Two assessment boards assessed property located in both counties for a combined market value of approximately \$210 million. The taxpayer refused to pay taxes calculated at that value. Ultimately, the appeals were resolved by reducing the market value of the property to \$8.5 million dollars. The counties were governed by the Fourth to Eighth Class County Assessment Law and the General County Assessment Law, neither of which stated that interest and **penalties** were to be established on the basis of the assessed value as finally determined. By contrast, the Second Class County Assessment Law does so provide.<sup>6</sup> Nonetheless, the Court concluded that the statutes should all be construed in the same manner. The court found no rational reason for computing **penalties** and interest differently in Fourth to Eighth Class Counties. Rather, the reasonable interpretation would be to adopt a uniform construction, particularly since tax statutes should be strictly construed against the government. The court found that the allegedly uncooperative behavior of the taxpayer at one stage of the proceedings was irrelevant.

In *Reaman v. Allentown Power Center, L.P.*, 74 A.3d 371 (Pa. Commw. Ct. 2013), the court affirmed the denial of an **abatement** of interest and **penalties**, on the grounds that the ordinance in question did not provide for **abatement**. The court stated that, absent authority in the ordinance to **abate** interest and **penalty**, there was no authority to do so, citing *Nine Penn Center Associates v. Tax Review Bd. of City of Philadelphia*, 692 A.2d 246 (Pa. Commw. Ct. 1997). The court

§ 23:67. Abatement of interest and penalties, 27 Summ. Pa. Jur. 2d Taxation § 23:67...

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further noted that the tax was not paid under protest and the taxpayer did not appeal an assessment by the township, but proceeded directly with an action in common pleas.

An assessment of business privilege tax together with interest and **penalties** was upheld in [Reaman v. Allentown Power Center, L.P.](#), 74 A.3d 371 (Pa. Commw. Ct. 2013). The taxpayer was assessed business privilege tax for 15 years beginning in 1995 on gross receipts from a retail commercial property. The ordinance was imposed on gross receipts from any activity carried on or exercised for gain or profit in the township. The ordinance made an exception for gross receipts on rentals by an owner from a building erected as a private dwelling and occupied as a residence by the owner during the tax year. The court held that the language of the ordinance fairly reached rentals of commercial property; the commercial property certainly was carried on for profit, and there was no point to the exception if rentals were not covered. A later ordinance stated an explicit example in the case of rental property. The later ordinance itself was ineffective, because it was enacted after Act 1988-145 prohibited the enactment of business privilege taxes after November 30, 1988. 72 P.S. § 4750.533. In any event, the later ordinance merely clarified the first ordinance. The example did not undermine the broad reach of the first ordinance. The court affirmed the denial of an **abatement** of interest and **penalties**, on the grounds that the ordinance in question did not provide for **abatement**. The court stated that, absent authority in the ordinance to **abate** interest and **penalty**, there was no authority to do so, citing [Nine Penn Center Associates v. Tax Review Bd. of City of Philadelphia](#), 692 A.2d 246 (Pa. Commw. Ct. 1997), reargument denied, (May 2, 1997). The court further noted that the tax was not paid under protest and the taxpayer did not appeal an assessment by the township, but proceeded directly with an action in common pleas.

In [Hvizdak v. Com.](#), 339 F.R. 2006 (Pa. Commw. Ct. June 8, 2010) (unreported), **penalties** were **abated** for a taxpayer who filed consistent with advice from a national accounting firm and consistent with prior years' filings.

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Footnotes

- 1 [Principal Life Ins. Co. v. City of Philadelphia Tax Review Bd.](#), 838 A.2d 854 (Pa. Commw. Ct. 2003) citing [Samuel Rappaport Ltd. Partnership v. Tax Review Bd. of City of Philadelphia](#), 682 A.2d 862 (Pa. Commw. Ct. 1996).
- 2 [Nine Penn Center Associates v. Tax Review Bd. of City of Philadelphia](#), 692 A.2d 246 (Pa. Commw. Ct. 1997).
- 3 [Eat'n Park Restaurants Business Trust v. Com.](#), 821 A.2d 160 (Pa. Commw. Ct. 2003) (en banc).
- 4 72 P.S. § 7403(d).
- 5 [PPL Holtwood, LLC v. Pike County Bd. of Assessment](#), 846 A.2d 201 (Pa. Commw. Ct. 2004).
- 6 72 P.S. § 5452.17.

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