

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION – LAW**

**CONSOLIDATED ELECTRICAL
DISTRIBUTORS, INC.,**

Petitioner,

v.

**TOWNSHIP OF HANOVER,
NORTHAMPTON COUNTY,
PENNSYLVANIA; TOWNSHIP OF
BETHLEHEM, NORTHAMPTON COUNTY,
PENNSYLVANIA; AND BERKHEIMER
TAX ADMINISTRATOR, INC.,**

Respondents.

No.: C-48-CV-2011-406

**CONSOLIDATED ELECTRICAL
DISTRIBUTORS, INC.,**

Petitioner,

v.

**TOWNSHIP OF BETHLEHEM,
NORTHAMPTON COUNTY,
PENNSYLVANIA; TOWNSHIP OF
HANOVER, NORTHAMPTON COUNTY,
PENNSYLVANIA; AND BERKHEIMER
TAX ADMINISTRATOR, INC.,**

Respondents.

No.: C-48-CV-2011-7767

OPINION OF THE COURT

Consolidated Electrical Distributors, Inc. ("CED") appeals from two decisions: (1) a July 14, 2011 decision by the Tax Appeals Board of Bethlehem Township, Northampton County, Pennsylvania; and

(2) a December 15, 2010 decision by the Tax Hearing Officer of Hanover Township, Northampton County, Pennsylvania. After careful review, we affirm.

BACKGROUND

The operative facts are not in dispute.

Both the Bethlehem Township Tax Appeals Board and the Hanover Township Tax Hearing Officer held hearings and made a full and complete record of the proceedings below. By agreement of the parties, the two appeals were consolidated. This Court has jurisdiction of the appeals pursuant to section 8434 of the Local Taxpayers Bill of Rights, 53 Pa.C.S.A. § 8434; section 752 of the Local Agency Law, 2 Pa.C.S.A. § 752; and sections 933(a)(2) and 5105(a)(2) of the Pennsylvania Judicial Code, 42 Pa.C.S.A. §§ 933(a)(2), 5105(a)(2).

The Business Privilege Tax

CED is an electrical supply company which has conducted business since 2001 in Bethlehem Township, Northampton County, Pennsylvania. See Petition for Review of Decision By Tax Hearing Officer of the Township of Hanover, Northampton County, Commonwealth of Pennsylvania, *Consolidated Elec. Distributors, Inc. v. Township of Hanover, et al.*, C-48-CV-2011-406 (C.P. Northampton Jan. 13, 2011) (“Hanover Pet.”) ¶¶ 6-7 & Exs. A, C. Companies that conduct business in Bethlehem Township are required to pay a business privilege tax based on the volume of business

they transact within the territorial limits of the Township. See Business Privilege Tax and Mercantile Tax Ordinance, Bethlehem Township Ordinance No. 2-76 ("Bethlehem Ordinance"), Sec. III. Bethlehem Township contracts with Berkheimer Tax Administrator, Inc. ("Berkheimer"), a private corporation, to collect the business privilege tax. See Hanover Pet. ¶¶ 4, 9.

The neighboring municipality of Hanover Township also levies a business privilege tax, pursuant to an ordinance virtually identical to that of Bethlehem Township. See Business Privilege Tax and Mercantile Tax Ordinance, Hanover Township Ordinance 78-1 ("Hanover Ordinance"), Sec. III. Like Bethlehem Township, Hanover Township contracts with Berkheimer to collect its business privilege tax. See Hanover Pet. ¶¶ 4, 9.

Business Privilege Tax Returns

Both Bethlehem and Hanover Townships require businesses to file an annual business privilege tax return using forms furnished by the Township Treasurer. See Bethlehem Ordinance Sec. IV(a); Hanover Ordinance, Sec. IV(a). Although the tax return forms are furnished by the Townships, the law requires the taxpayer to supply the information requested in the form, including the taxpayer's "business address." Bethlehem Ordinance, Sec. IV(b) & (c); Hanover Ordinance, Sec. IV(b) & (c). The taxpayer is required to swear by affidavit to the accuracy of the information provided in the return. See Bethlehem Ordinance, Sec. IV(a); Hanover Ordinance, Sec. IV(a) ("Every person making a return shall certify the correctness thereof by

affidavit.”). The law requires Berkheimer to send the taxes to the taxing jurisdiction specified by the taxpayer in its tax return form. See 53 P.S. § 6924.513(a)(2) (“Income taxes received from employers, taxpayers or other tax collection districts shall be distributed based on the information submitted by the employers, taxpayers or tax collection districts.”).

Berkheimer’s Collection of CED’s Business Privilege Taxes

When CED opened its business in Bethlehem Township in 2001, Berkheimer sent CED a business privilege tax return form. See Hanover Pet., Ex. C. The form incorrectly listed CED’s business address as “Route 22 & 512, Bethlehem, PA,” an address that was located in Hanover Township. See *id.* CED’s correct business address was 2030 Highland Avenue, Bethlehem, Pennsylvania, which was located in Bethlehem Township. See *id.* Consistent with this error in CED’s stated business address, the tax form incorrectly listed CED’s taxing jurisdiction as Hanover Township rather than Bethlehem Township. See *id.*

After receiving the form in 2001, CED made no investigation to determine whether its business was located in Hanover Township or Bethlehem Township. See *id.* CED did not correct either of the errors in the tax form. See *id.* It completed the return, swore to its correctness by affidavit, and sent it to Berkheimer with the tax due. See *id.* In accordance with the law, based on CED’s sworn affidavit that the business address and

taxing jurisdiction listed in the return were correct, Berkheimer sent CED's taxes to Hanover Township. *See id.*

In each of the following years through 2009, Berkheimer sent a tax return form to CED listing the same incorrect business address and taxing jurisdiction that had appeared in the 2001 return submitted by CED. *See id.* In each of those years, CED again completed the return without correction, swore to its correctness by affidavit, and submitted it to Berkheimer with the tax due. *See id.* In each of those years, in accordance with the law, based on CED's sworn affidavit that the business address and taxing jurisdiction listed in the return were correct, Berkheimer sent CED's taxes to Hanover Township. *See Hanover Pet.* ¶ 10-11, Ex. C.

Bethlehem Township's Notice of Underpayment

In the years 2001 through 2009, CED filed no business privilege tax returns with Bethlehem Township. *See Hanover Pet.*, Ex. C. On August 19, 2010, after performing an audit and discovering that CED had failed to pay business privilege taxes to Bethlehem Township, the Bethlehem Township Audit Department sent CED a Notice of Underpayment for the years 2001 through 2009 stating that CED owed \$79,153.41 in unpaid taxes, \$90.00 in license fees, \$40,547.82 in interest, and \$4,749.20 in penalties, for a total of \$122,967.35. *See Hanover Pet.* ¶ 15 & Ex. B.

Hanover Township issued a tax refund for the years 2007, 2008, and 2009 in the amount of \$28,972.12, which reduced the total amount due to \$93,995.23. See Hanover Pet., Ex. C. Hanover Township declined to issue a refund for the years 2001 through 2006, because refund requests are subject to a three-year statute of limitations. See 53 Pa.C.S.A. § 8425(a); Hanover Pet., Ex. C.

CED's Requests for Hearing

Berkheimer acted as both Tax Collector and Tax Hearing Officer for Hanover Township. See Hanover Pet., Ex. F. Accordingly, on October 19, 2010, CED sent Berkheimer a written request for a hearing. See Hanover Pet., Ex. C. CED asserted that it did not owe any taxes to Bethlehem Township, because it had already paid the taxes to Bethlehem Township's Tax Collector, Berkheimer, and Berkheimer had mistakenly sent the taxes to Hanover Township. See *id.* CED asserted that (1) Berkheimer had made an "incorrect designation on its preprinted tax forms"; (2) CED had "no knowledge of the district designations made by [Berkheimer] used for internal tax allocation purposes"; (3) CED "reasonably relied" on the district designation in Berkheimer's tax forms and "never questioned" whether the taxing jurisdiction listed in the tax forms might be incorrect; (4) Berkheimer made an "internal allocation" of the taxes to Hanover Township rather than Bethlehem Township; (5) CED bore no legal responsibility for Berkheimer's "misallocation" of taxes to the wrong taxing jurisdiction; and (6) CED was

not requesting a tax refund from Hanover Township but, rather, was requesting that Bethlehem Township's Notice of Underpayment be vacated and that CED's taxes be "reallocated" from Hanover Township to Bethlehem Township. Hanover Pet. ¶ 16 & Ex. C.

CED did not raise any issue as to the timeliness of Bethlehem Township's Notice of Underpayment. See Hanover Pet., Ex. C. There is no statute of limitations for a municipality seeking unpaid business privilege taxes where the taxpayer has failed to file a return. See 53 P.S. § 6924.319 ("No assessment may be made of any tax imposed under this chapter more than five years after the date on which such tax should have been paid except where a fraudulent return or no return has been filed.").

On or about November 10, 2010, CED submitted a form entitled "Petition for Appeal and Refund" to Bethlehem Township, seeking relief from the Notice of Underpayment and attaching a copy of the October 19, 2010 letter it had sent to Berkheimer stating the grounds for its challenge. See Bethlehem Pet., Exs. E, F.

The Decision By the Hanover Township Tax Hearing Officer

On December 9, 2010, Berkheimer, acting as the Tax Hearing Officer for Hanover Township, held a hearing on CED's appeal. See Hanover Pet., Ex. F. CED argued that the three-year statute of limitations for tax refunds should not apply, because CED was not seeking a tax refund but a "reallocation" of taxes from Hanover Township to Bethlehem Township. See

id. On December 15, 2010, Berkheimer issued a decision denying the appeal. *See id.* Berkheimer held that the law does not provide a remedy of “reallocation” from one taxing jurisdiction to another and that CED’s request therefore must be treated as a request for a tax refund. *See Hanover Pet., Exs. E, F.* Berkheimer further held that it had correctly denied CED a tax refund for the years 2001 through 2006, since the three-year statute of limitations barred an award of a tax refund for the years prior to 2007. *See Hanover Pet., Ex. F.*

CED’s Appeal from the Hanover Township Decision

On January 13, 2011, CED filed in this Court a Petition for Review of the December 15, 2010 decision by Hanover Township’s Tax Hearing Officer denying a tax refund. *See Hanover Pet.* CED named Bethlehem Township and Berkheimer as additional defendants. *See id.* On April 6, 2011, upon agreement of the parties, this Court continued the matter in order to await a ruling on CED’s appeal from the Notice of Underpayment before the Bethlehem Township Tax Appeals Board. *See Consolidated Electrical Distributors, Inc. v. Hanover Township, et al.*, No. C-48-CV-2011-406 (C.P. Northampton Co. Apr. 6, 2011) (McFadden, P.J.).

The Decision By the Bethlehem Township Tax Appeals Board

On June 8, 2011, the Board of Commissioners of Bethlehem Township, acting in Executive Session as the Tax Appeals Board, held a hearing on CED’s appeal from Bethlehem Township’s Notice of Underpayment. *See*

Bethlehem Pet. ¶ 26, Ex. F. CED did not attend the hearing, but CED and the Bethlehem Township Director of Finance submitted a Joint Stipulation that was admitted into evidence at the hearing. *See id.* On July 14, 2011, the Tax Appeals Board issued a decision denying CED's appeal. *See id.* The Tax Appeals Board held that CED had operated exclusively in Bethlehem Township from 2001 through 2009 but had incorrectly paid its taxes to Hanover Township and therefore was not entitled to relief from the Notice of Underpayment. *See id.*

CED's Appeal from the Bethlehem Township Decision

On August 12, 2011, CED filed in this Court a Petition for Review of the July 14, 2011 decision of Bethlehem Township's Tax Appeals Board denying its request for relief from the Notice of Underpayment. *See* Petition for Review of Decision of Tax Appeals Board of the Township of Bethlehem, Northampton County, Commonwealth of Pennsylvania, *Consolidated Elec. Distributors, Inc. v. Township of Bethlehem, et al.*, C-48-CV-2011-7767 (C.P. Northampton Co. Aug. 12, 2011) ("Bethlehem Pet."). By agreement of the parties, the two appeals were consolidated. *See Consolidated Elec. Distributors, Inc. v. Township of Hanover, et al.*, C-48-CV-2011-406 (C.P. Northampton Co. Nov. 23, 2011) (McFadden, P.J.).

DISCUSSION

Standard of Review

The role of a trial court exercising its appellate function in reviewing a complete record developed in a local agency proceeding is limited to determining whether the record contains substantial evidence supporting the determinations of the trier of fact, whether the procedure before the agency was contrary to statute, whether constitutional rights were violated or whether an error of law was committed.

City of Pittsburgh v. Kisner, 746 A.2d 661, 665 (Pa. Commw. 2000) (citing Local Agency Law § 754(b), 2 Pa.C.S.A. § 754(b)) (appeal from arbitrator's decision denying police officer's claim for Heart & Lung Act benefits); *accord Clement & Muller, Inc. v. Tax Review Bd.*, 659 A.2d 596, 597 (Pa. Commw. 1995) (appeal from Philadelphia Tax Review Board's decision concerning business privilege tax); *City of Philadelphia v. Tax Review Bd.*, 628 A.2d 1220, 1221 n.4 (Pa. Commw. 1993) (same).

Bethlehem Township's Notice of Underpayment

CED argues that Bethlehem Township's Notice of Underpayment should be vacated, because CED has already paid its taxes to Bethlehem Township's Tax Collector, Berkheimer, and that Berkheimer, as Bethlehem Township's agent, "misallocated" the funds to Hanover Township. This argument fails, for two reasons.

First, there is no evidence in the record that CED paid its taxes to Bethlehem Township's Tax Collector. The record reflects that CED paid its taxes to Berkheimer solely in Berkheimer's capacity as Hanover Township's

Tax Collector. CED's tax forms listed its business address and taxing jurisdiction as Hanover Township. CED affirmed by affidavit that its business address was in Hanover Township and that its taxing jurisdiction was Hanover Township. Based on CED's affidavits, Berkheimer remitted CED's taxes to Hanover Township. There was nothing in any of these transactions to indicate that Berkheimer was acting for Bethlehem Township or that CED believed that Berkheimer was acting for Bethlehem Township. Thus, there is no basis in the record for CED's contention that it has already paid its taxes to Bethlehem Township's Tax Collector. We find that the record supports the finding by the Bethlehem Township Tax Appeals Board that CED paid no business privilege taxes to Bethlehem Township.

Second, there is no evidence in the record that Berkheimer, as Bethlehem's agent, "misallocated" CED's funds to Hanover Township. Berkheimer was required by law to send CED's taxes to the taxing jurisdiction specified in CED's tax return. See 53 P.S. § 6924.513(a)(2). Thus, the record reflects that CED, by swearing to the correctness of its tax return, instructed Berkheimer to send its taxes to Hanover Township. Accordingly, we find no support in the record for a finding that Berkheimer "misallocated" CED's taxes.

Even if Berkheimer had "misallocated" CED's taxes, the two Townships would not have had authority to "reallocate" CED's taxes from Hanover Township to Bethlehem Township, since the Local Agency Law and the

Townships' ordinances do not provide a remedy of "reallocation."

Accordingly, we find that the Bethlehem Township Tax Appeals Board properly treated CED's appeal as a request for relief from the Notice of Underpayment and that the Hanover Township Tax Hearing Officer properly treated CED's appeal as a request for a tax refund.

Hanover Township's Denial of a Tax Refund

CED argues that although it was required to swear to the correctness of its tax returns, it reasonably relied on Berkheimer's preprinted tax forms stating that its taxing jurisdiction was Hanover Township. There is no basis for this argument in the record. Because the law requires the taxpayer to swear by affidavit to the correctness of the information in its return, it was CED's duty to verify its own business address and perform sufficient investigation to determine the taxing jurisdiction in which it was located. CED has cited to no authority for the proposition that it was permitted to rely on information provided in Berkheimer's preprinted tax form.

CED also has cited no authority that would require the Treasurer or Tax Collector to check the accuracy of the information CED provided in its tax return and to correct CED's mistakes. On the contrary, the law requires the Tax Collector to send the taxes to the jurisdiction specified by the taxpayer in its sworn tax return. See 53 P.S. § 6924.513(a)(2). The fact that Berkheimer also collected business privilege taxes for Bethlehem Township does not justify an inference that Berkheimer would cross-check

the property records in the two Townships to verify the accuracy of taxpayers' sworn affidavits concerning their business addresses.

Accordingly, we find no merit in CED's contention that it was relieved of its obligation to provide accurate information in its tax return.

CED argues that the three-year statute of limitations should not apply to its request from Hanover Township because it is not requesting a refund but is requesting a reallocation of the taxes from Hanover Township to Bethlehem Township. We agree with the Hanover Township Tax Hearing Officer that, because the law provides no remedy of "reallocation," CED's request must be treated as a request for a tax refund and is therefore subject to the statute of limitations applicable to requests for tax refunds.

CED cites cases involving errors and omissions of public officials with respect to property taxes, *see, e.g., Albert v. Lehigh Coal & Nav. Co.*, 246 A.2d 840, 845 (Pa. 1968). CED's reliance on these cases is substantively misplaced. In each case, a sale of land for nonpayment of taxes was held to be void on the ground that the landowner had paid the property taxes but that government officials had mistakenly applied the payment to a different parcel of land. Moreover, the government official in each case was charged with the responsibility for ensuring that the payment was applied to the correct parcel on the government's books, a task over which the taxpayer had no control. There was no legal requirement that the taxpayer execute an affidavit swearing to the correctness of the government official's decision

as to which parcel of land should be credited with the payment. Here, by contrast, although the Tax Collector's preprinted tax form indicates that the taxes should be paid to a particular municipality, the law transfers responsibility from the Tax Collector to the taxpayer by (1) requiring that the taxpayer make its own determination as to its taxing jurisdiction and swear by affidavit to the correctness of that determination; and (2) requiring the Tax Collector to send the payment to the taxing jurisdiction specified by the taxpayer in its tax return. See Bethlehem Ordinance, Sec. IV(a)(b) & (c); Hanover Ordinance, Sec. IV(a)(b) & (c). Thus, the cases cited by CED do not apply to the issue presented here.

CED's Waiver of Laches and Equitable Estoppel

Bethlehem Township, responding to CED's claims of procedural unfairness, has asserted that CED "cannot state a claim against Respondent for laches or unclean hands." Respondent's Memorandum of Law in Opposition to Petition for Review of the Decision By Tax Appeals Board of the Township of Bethlehem, Northampton County, Commonwealth of Pennsylvania, *Consolidated Elec. Distributors, Inc. v. Township of Hanover, et al.*, C-48-CV-2011-406 (C.P. Northampton Co. Dec. 10, 2012), at 4. We agree. CED did not raise the defenses of laches or equitable estoppel either against Bethlehem Township's attempt to collect unpaid taxes for the years 2001 through 2006 or against Hanover Township's defensive use of the statute of limitations to deny a tax refund for the years 2001 through 2006.

Because CED did not present these issues to the agencies below, they are waived.

The affirmative defenses of laches and equitable estoppel may be asserted against the government in an action for unpaid taxes where the taxpayer can prove that the government was guilty of failing to exercise due diligence in bringing the claim and that the taxpayer was prejudiced by the unreasonable delay. *See In re Estate of Leitham*, 726 A.2d 1116, 1119-20 (Pa. Commw. 1999) (claim for inheritance taxes barred where government failed to act on knowledge in its possession until after estate was closed and assets had been distributed). “Whether the government acted with due diligence depends upon what it “might have known by use of information within its reach,” and prejudice may be found where “some change in the condition or relation of the parties occurs during the period the complaining party failed to act.” *Id.* at 1119. “[T]he application of laches involves a factual determination and an ad hoc balancing of conflicting interests in each case.” *Id.* at 1120 (quoting *Weinberg v. Com., State Bd. of Examiners*, 501 A.2d 239, 243 (Pa. 1985)) (laches would not bar State Board of Examiners from bringing disciplinary proceedings against accountant based on conduct six years earlier).

Similarly, a party may assert equitable estoppel against the government to prevent the government’s defensive use of a statute of limitations to deny a claim. *See Department of Public Welfare v. UEC, Inc.*,

397 A.2d 779, 784-85 (Pa. 1979) (government estopped from asserting statute of limitations against contractor's claim for breach of contract where government had assured contractor it would honor the contract and then refused to pay after the statute of limitations had run). To prove equitable estoppel, a party must prove by "clear, precise, and convincing evidence" that the opponent made an intentional or negligent misrepresentation and that, as a result of the misrepresentation, the party neither knew nor could have known, through the exercise of reasonable diligence, that it had a right to relief. *See Fine v. Checcio*, 870 A.2d 850, 860-61 (Pa. 2005). Like laches, equitable estoppel is highly fact-dependent. *See Ferguson Elec. Co., Inc. v. Department of General Servs.*, 3 A.3d 681, 689 (Pa. Commw. 2010).

Where a party fails to raise a defense before an administrative agency, the defense is waived. *See Wing v. Unemployment Bd.*, 436 A.2d 179, 181 (Pa. 1981). The waiver doctrine has been applied to local agency proceedings by statute. *See Roomet v. Board of License & Inspection Review*, 928 A.2d 1162, 1165 n.2 (Pa. Commw. 2007) ("Section 753(a) of the Local Agency Law incorporates the waiver doctrine by requiring all legal questions be raised before the administrative agency hearing the appeal.").

[T]he administrative law tribunal must be given the opportunity to correct its errors as early as possible; diligent preparation and effective advocacy before the tribunal must be encouraged by requiring the parties to develop complete records and advance all legal theories; and the finality of the lower tribunals'

determinations must not be eroded by treating each determination as part of a sequence of piecemeal adjudications.

Wing, 436 A.2d at 181 (“[E]ven if the Bureau, the Referee, and the Board all espouse an incorrect theory, the employer must at least propose the allegedly correct theory or waive consideration of it.”). It is not enough that a legal theory have been raised in some general fashion. It must have been expressly presented to the agency; the party asserting it must have elicited testimony to support it; and it must be clear from the record that the issue was properly preserved for appellate review. See *Roomet*, 928 A.2d at 1165 n.2 (landowner waived arguments that Philadelphia Historical Commission had exceeded its authority by denying him a permitted use of his property, misapplied federal guidelines, and violated constitutional legal principles: “Before the Board [of License and Inspection Review], Landowner neither expressly raised these issues nor elicited testimony to support his positions. Accordingly, these issues are waived.”); *Lajevic v. Department of State, Bureau of Prof. and Occupational Affairs*, 645 A.2d 348, 354-55 (Pa. Commw. 1994) (dentist who argued he was prejudiced by twenty-month delay in Commonwealth’s action to suspend his license had waived the defense of laches, because he did not cite to the record where the issue was preserved and, “As neither Dr. Lajevic nor the Commonwealth presented evidence on this issue before the Board, we cannot hold that the affirmative defense of laches was properly raised and preserved.”).

The waiver rule applies to the defenses of laches and equitable estoppel. A party must raise and present evidence on such defenses at the administrative level in order to give the agency a fair opportunity to evaluate and rule upon the defenses and provide a fully developed record for appellate review, or the defenses are waived. *See Kindle v. Com., State Bd. of Nurse Examiners*, 515 A.2d 1342, 1344-45 (Pa. 1986); *Lajevic*, 645 A.2d at 354-55.

In this case, the only arguments CED presented to the agencies below were that (1) CED owed no taxes to Bethlehem Township, because it had already paid the taxes to Bethlehem Township's Tax Collector, which had "misallocated" the funds; and (2) the three-year statute of limitations applicable to tax refunds should not apply to CED, because CED did not seek a tax refund from Hanover Township but merely sought a "reallocation" of its taxes to Bethlehem Township based on Berkheimer's misallocation of the funds. CED failed to present the arguments of laches or equitable estoppel either as to Bethlehem Township's Notice of Underpayment or as to Hanover Township's denial of a tax refund. To preserve the defenses of laches and equitable estoppel for appellate review, CED would have had to present evidence, and allow the Townships to present evidence, on a number of nuanced factual issues, including:

- (1) whether CED knew or should have known its own business address and taxing jurisdiction;

- (2) whether CED was reasonable in assuming that Berkheimer was acting for two different townships when it sent tax forms listing CED's taxing jurisdiction as Hanover Township;
- (3) whether CED was reasonable in assuming that Berkheimer had investigated and determined CED's correct taxing jurisdiction, notwithstanding that the business address printed in Berkheimer's tax form was incorrect;
- (4) whether the taxing authorities said or did anything that might have placed CED on notice of its correct taxing jurisdiction;
- (5) the degree of CED's fault in disregarding its legal obligation to investigate and swear to the accuracy of the information it was providing in its tax returns;
- (6) whether Berkheimer acted reasonably in relying on CED's sworn affidavits over a period of ten years that its business address was in Hanover Township and its taxing jurisdiction was Hanover Township;
- (7) the reasonableness of CED's continuing assumption, over a period of ten years, that the tax forms it was receiving were correct in listing Hanover Township as its taxing jurisdiction when the forms showed a business address in Hanover Township and CED was in fact located in Bethlehem Township;
- (8) which party was in the best position to identify the mistake; and
- (9) whether and when each party should have discovered that CED's taxes were being sent to the wrong jurisdiction.

Because CED did not raise the theories of laches or equitable estoppel before the Bethlehem Township Tax Appeals Board or the Hanover Township Tax Hearing Officer, the Townships did not have an opportunity to present evidence in response to those arguments or preserve the evidence for appellate review, and the agencies did not have an opportunity to consider

and rule upon them. Accordingly, under the authorities set forth above, these arguments are waived.

CONCLUSION

After our review of the law and the record below, we find that the decisions of the Bethlehem Township Tax Appeals Board and the Hanover Township Tax Hearing Officer are consistent with the law and supported by substantial evidence. We find CED's arguments to be without merit. Accordingly, we affirm.

WHEREFORE, we enter the following:

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION – LAW**

**CONSOLIDATED ELECTRICAL
DISTRIBUTORS, INC.,**

Petitioner,

v.

**TOWNSHIP OF HANOVER,
NORTHAMPTON COUNTY,
PENNSYLVANIA; TOWNSHIP OF
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No.: C-48-CV-2011-7767

ORDER OF COURT

AND NOW, this 18th day of March, 2013, upon consideration of Consolidated Electrical Distributors, Inc.'s ("CED") "Petition for Review of Decision By Tax Hearing Officer of the Township of Hanover, Northampton

County, Commonwealth of Pennsylvania” and CED’s “Petition for Review of Decision By Tax Appeals Board of the Township of Bethlehem, Northampton County, Commonwealth of Pennsylvania” and the briefs and arguments thereon, it is hereby **ORDERED** and **DECREED** that CED’s Petitions for Review are **DENIED**. It is further ordered that (1) the July 14, 2011 decision of the Bethlehem Township Tax Appeals Board denying CED relief from the Bethlehem Township Audit Department’s August 19, 2010 Notice of Underpayment; and (2) the December 15, 2010 decision of the Hanover Township Tax Hearing Officer denying CED a tax refund are **AFFIRMED**.

BY THE COURT,

MICHAEL J. KOURY, JR.