

interest, paid in protest by Petitioners and for which Petitioners have sought recovery in their Claims for Revision for overpayments and interest as follows:

<u>Year</u>	<u>Tax Overpayment</u>	<u>Interest Paid</u>
1981	\$1,001.00	\$390.39
1982	505.85	136.58
1983	446.24	142.80
1984	365.69	--
1985	263.87	--
1986	188.47	--

4. The sum of the tax in controversy, exclusive of interest, is \$2,771.12. The sum of the interest in controversy is \$669.77.

5. The controversy on which the Petition is based involves the use of the Rule of 78's by CC Partners and Shelby Partners, two limited partnerships in which one of the Petitioners holds an interest as a limited partner.

6. The difference in Delaware taxable income and Delaware tax based thereon for the years 1981-1986 are:

	<u>1981 Taxable Income</u>	<u>1981 Tax</u>
Economic Accrual	\$45,976.59	\$4,093.14
Rule of 78's	37,528.59	3,092.14
Difference	8,448.00	1,001.00

	<u>1982 Taxable Income</u>	<u>1982 Tax</u>
Economic Accrual	\$50,575.63	\$4,661.71
Rule of 78's	46,490.63	4,155.86
Difference	4,085.00	505.85

	<u>1983 Taxable Income</u>	<u>1983 Tax</u>
Economic Accrual	\$51,123.37	\$4,735.65
Rule of 78's	47,585.34	4,239.41
Difference	3,538.03	446.24

	<u>1984 Taxable Income</u>	<u>1984 Tax</u>
Economic Accrual	\$47,261.42	\$4,289.89
Rule of 78's	44,263.92	3,884.20
Difference	2,997.50	365.69

	<u>1985 Taxable Income</u>	<u>1985 Tax</u>
Economic Accrual	\$54,076.50	\$4,539.19
Rule of 78's	51,610.50	4,275.32
Difference	2,466.00	263.87

	<u>1986 Taxable Income</u>	<u>1986 Tax</u>
Economic Accrual	\$55,093.70	\$4,221.09
Rule of 78's	53,150.70	4,032.62
Difference	1,943.00	188.47

7. " 'The Rule of 78's method [often referred to as the sum-of-the-digits method] is a mechanical formula for allocating interest to time periods during the life of the loan'.... Under the Rule of 78's method of allocation, the total amount of interest to be allowed during the life of the loan is multiplied by a fraction, i.e., the number of remaining months to maturity (the numerator) divided by the sum of the number of months in the original term (the denominator)... When the Rule of 78's method is used to allocate the interest expense deduction, in each succeeding year this reducing fraction is applied to the total interest due, and the product thereof is expense as interest for the taxable year." Opinion, May 3, 1993. Footnote 8, Kenneth L. and Catherine S. Mulholland, et al. v. the United States, Fed. Cl. Ct. No. 645-85T and consolidated cases.

8. The economic accrual method is defined in United States

Revenue Ruling 83-84, 1983-1 C.B. 97: "...the true cost of indebtedness is the effective date of interest, which is a uniform rate over the term of the loan and is based on the amount of the loan and the repayment schedule provided in the loan agreement, when applied to the unpaid balance of the indebtedness for a given period... Opinion May 3, 1993, Footnote 3, Mulholland, et al. v. The United States, loc. cit.

In addition to the above "stipulated facts", there was more information in the Stipulation. The Board, in addition learned that this matter was ultimately presented to the Board because Petitioners' Federal and Delaware tax returns for the years 1981, 1982, and 1983 reflected the participation of one of Petitioners in two limited partnerships which reported partnership information based on the use of the Rule of 78's by the partnerships. When the use of the Rule of 78's was rejected by the federal law, Petitioners filed amended tax returns for years 1981, 1982, and 1983 based on the economic accrual method of reporting interest. Since this calculation resulted in additional taxes to be paid, Petitioners seek recovery of the additional taxes paid, plus interest. Petitioners subsequently filed Federal and Delaware tax returns for the years 1984, 1985 and 1986 and reported partnership information based on the use of the economic accrual method. For each of these years, Petitioners seek recovery of the "additional" tax they paid because of use of this method of reporting interest as opposed to the use of the Rule of 78's. In summary, Petitioners have filed Claims for Revision for "overpayments" they claim they

made for the tax years 1981 through 1986.

Petitioners' contention is basically that Delaware law, since it does not specifically preclude the use of the Rule of 78's as a method of calculating interest, must permit its use. In support thereof they suggest that since the Delaware Department of Insurance, pursuant to Regulation No. 5, Article V. Refunds, Paragraph A(2), permits a refund to not be less than the amount computed by the use of the Rule of 78's, then the Respondent should recognize this rule as a valid method of computing interest for tax purposes. In addition, Petitioners, contend that this apparent inconsistent position taken by two (2) State of Delaware agencies results in a denial of Petitioners' constitutional rights under the XIVth Amendment to the U.S. Constitution and Article VIII, Section 1 of the Delaware Constitution. They claim they have been denied the equal protection of the laws. They state that the Rule of 78's is the Rule of 78's and if it can be used in an insurance matter, it can be used in a tax matter! It's the same Rule of 78's.

Respondent contends that this case is governed by a Delaware statute - 30 Delaware Code §1147. This statute provides:

"A taxpayers method of accounting for purposes of this chapter shall be the same as his method of accounting for federal income tax purposes. If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this chapter shall be similarly changed."

The essence of this statute is that Delaware personal income tax law is based on federal income tax law. It is piggy backed on the federal statute. Accordingly, when the federal law prohibits the

use of the Rule of 78's in federal tax cases¹, Delaware personal income tax law prohibits the use of the Rule of 78's². It's just that simple.

Petitioners' arguments that 30 Delaware Code §1147 is violative of both the Federal and Delaware Constitutions must be saved for another forum. The Tax Appeal Board does not have the ability to declare a statute unconstitutional, since only a court of law or equity can do this.

Based upon the foregoing the Notice of Determination is affirmed and Petitioners' Claim for Revision is denied.

SO ORDERED this *10th* day of March, 1995.

Joseph S. Yucht

 Cynthia Hughes Gorman

John H. Cordery

Ch K

Regina C. Mendez

¹ See Bruce A. and Marianne S. Prabel v. Commissioner of Internal Revenue, 882 F.2d 820 (3 Cir. 1989) and Kenneth L. and Catherine S. Mulholland, et al. v. The United States, Fed. Cl. Ct. No. 645-85T, 16 Ct. Cl. 252 (1989).

² See 30 Delaware Code §§1101, 1105, 1146.