

TAX APPEAL BOARD OF THE STATE OF DELAWARE

LEONARD VOSS,)	
Petitioner,)	
)	
v.)	Docket No. 1007
)	
DIRECTOR OF REVENUE,)	
Respondent.)	
)	

Before: Joseph S. Yucht, Esquire, Chairman; John H. Cordrey, Esquire, Vice Chairman; Harry B. Roberts, David Eppes, and Regina Dudziec, Members.

Petitioner and his wife appeared *pro se*.

Joseph Patrick Hurley, Jr., Esquire, Deputy Attorney General for Respondent.

DECISION AND ORDER

John H. Cordrey, Esquire, Vice Chairman. The case is before the Board on the facts alleged in the petition and admitted by Respondent, the Respondent's Answers to Interrogatories, and a hearing before the Board. The facts are that Petitioner has been a crabber for more than 35 years who baits pots and collects crabs selling them to wholesalers for resale. Petitioner has purchased a license for crabbing from the Department of Natural Resources and Environmental Control (hereafter DENREC) but no Wholesaler's License has ever been purchased from the Respondent by Petitioner.

By letter dated July 8, 1988, Respondent informed Petitioner that he had not purchased a business license as required under Chapters 21-43, Title 30, Delaware Code. Petitioner advised Respondent that he considered himself exempt from such licensure and by letter of February 1, 1990 Respondent advised Petitioner that the license fee, penalties and interest for the years 1987, 1988, and 1989 amounted to \$264.00. Respondent followed that notice with a Notice of Assessment dated February 16, 1990, and Petitioner timely

protested by letter dated February 20, 1990. Respondent issued a Notice of Determination dated May 21, 1990 which was timely appealed to this Board on August 15, 1990.

Senate Bill No. 396 was introduced on April 12, 1990 and was signed into law on July 2, 1990 and codified in 67 Del. Laws, c. 287. Said bill modified 30 Del.C. §2901 by adding present subsection (b) which provides: "For purposes of this Chapter, the word 'wholesaler' shall not apply to a person who catches crabs for purposes of sale, or who holds a crabbing license, or who holds any other State occupational license which is required for a person to engage in commercial crabbing." The bill also added a new subsection §2908 (g) which provides: "The provisions of § 2902 of this Chapter shall not apply to any person who catches crabs for sale or who holds a crabbing license, or holds any other occupational license which is required for a person to engage in commercial crabbing." Respondent has conceded that Petitioner is not required to pay a wholesaler license fee for his crabbing activities after the passage of this legislation.

Petitioner produced compelling evidence that he and persons in his occupation have never paid a wholesaler's license, and Respondent has admitted that he knows of no other crabber who has paid for the license. Two members of the Delaware Shellfish Advisory Council also testified that they had never been advised by Respondent that a wholesaler's license was required for crabbers. Further, their duties include updating crabbers of licenses and fees that are required for acting as crabbers and they have never advised crabbers that a wholesaler's license was required.

The fact that the legislation clearly exempting Petitioner from this license fee was enacted after the dates for which Respondent seeks the license fee does not mean that the Legislature intended that the license requirement apply to Petitioner before the

amendment. The Legislature was acting in response to Petitioner's request that the law be made clear that it does not apply to Petitioner and those in his industry because he, and only he, was being pursued by the Respondent for the license fee.

Petitioner, and others who testified, stated that they engage in the activity of "farming" by "planting" their crab pots and "harvesting" their "crop" of crabs and selling this crop to others who then resell the crabs. Petitioner also testified that he did not purchase crabs and resell to other individuals, his livelihood being made from selling what he "harvests" on the farm. The Board finds that Petitioner is the "owner or operator of a farm" and sells "unprocessed agricultural products" therefore the provisions of 30 Del.C. §2908(a)(1)a. exempt Petitioner from the requirements of Chapter 29.

Petitioner presented a multitude of witnesses from within and without the Department in an effort to establish a defense of selective prosecution. Given the Board's finding that Petitioner is exempt from the license fee it is unnecessary for the Board to consider this defense.

The determination of the Division of Revenue is therefore REVERSED this 12th day of July, 1991.

SO ORDERED.

John H. Cochrane

Regina C. Rudzins

Carol U.

Joseph S. Yurko

Harry B. Ralston