

Petitioner's contention that he filed the request for the extension of time to file the return was found by the Tax Appeal Board not to be supported by the evidence.

Based upon the foregoing the Director's Notice of Determination is affirmed.

SO ORDERED.

October 8, 1993.

John H. Cordery
Regina C. Dudgeon

[Signature]

TAX APPEAL BOARD OF THE STATE OF DELAWARE

FRANK E. ACIERNO,)	
Petitioner,)	
)	
v.)	Docket No. 1052
)	
DIRECTOR OF REVENUE,)	
Respondent.)	
)	

Before: John H. Cordrey, Esquire, Vice Chairman; David Eppes, and Regina Dudziec, Members. Joseph S. Yucht, Esquire, Chairman; and Harry B. Roberts, recused themselves from any participation in this case.

Petitioner appeared *pro se*.

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

FACTUAL DECISION AND ORDER

John H. Cordrey, Esquire, Vice Chairman. This is the Board's decision regarding the facts of the above captioned case. The parties may submit simultaneous briefs arguing the facts and the law on June 28, 1993. The case is before the Board on the facts alleged in the petition and admitted by Respondent and a hearing before the Board. The facts are as follows:

1. The Petitioner is an individual who resides at 4001 Springfield Lane, Wilmington, DE 19809.
2. A notice of determination indicating no extension requests were filed by Petitioner for the year 1986 and therefore the penalty and interest paid by Petitioner would not be refunded. The Notice was mailed to Petitioner on March 27, 1991.
3. The amount in controversy is a failure to file penalty in the amount of

\$33,394.00 assessed against Petitioner for his alleged failure to file his 1986 income tax return on a timely basis.

4. A Delaware Form 1027, "Application for automatic extension of time to file Delaware individual tax return" was prepared for the Petitioner in 1987 by Mr. Styer , the Petitioner's accountant.

5. A copy of the extension request is part of Exhibit 1 and bears the typed date of "April 27, 1987", the signature of Petitioner in the blank above the caption "*Signature of preparer other than taxpayer*", states that there is a balance due with the application in the amount of \$150,000.00, and does not bear the signature of Petitioner's accountant.

6. Petitioner has no recollection of how the extension form would have been mailed to the Division of Revenue in 1987.

7. Petitioner did not mail the extension form by certified or registered mail and has no postmark on any document showing that the extension form was mailed.

8. Petitioner did not include a check in any amount with any extension request and paid the tax liability with his return which was mailed in October 1987.

9. Petitioner's accountant requested an extension for time to file the federal income tax return by a Federal Form No 2688 dated August 14, 1987 which was subsequently approved by the Internal Revenue Service. The document bore the signature of Petitioner's accountant and not the Petitioner.

10. No copy of the Federal Form No. 2688 was mailed to the Division of Revenue prior to the mailing of the Petitioner's final tax return in October 1987. No request for an extension to file the Delaware return was prepared by Mr. Styer other than the extension

referred to in Finding of Fact number 4.

11. Although Petitioner's accountant had no recollection regarding his advise to Petitioner, he normally counseled his clients to pay the estimated tax liability when they file a request for an extension to file a Delaware Income Tax Return.

12. The Division of Revenue has no record of receiving any request for extensions from Petitioner for 1986 prior to the filing of Petitioner's return in October 1987.

13. Mr. McCray, an employee of the Division of Revenue, testified that there have been occasions in the past when a taxpayer claims to have filed a form or payment, the Division cannot locate the form or payment, and subsequently the Division finds the form or payment.

14. Based upon the exhibits, petition and testimony the Board finds that the Delaware Form No. 1027 prepared by Mr. Styer was not mailed to the Division by Petitioner on or before April 30, 1987.

SO ORDERED.

John H. Cordrey

[Signature]

Regina C. Dudgeon

dated:

May 21, 1993