

**TAX APPEAL BOARD OF THE STATE OF DELAWARE**

DR. AND MRS. M. JOSEPH REITMAN,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 1077
	)	
DIRECTOR OF REVENUE,	)	
	)	
Respondent.	)	

Petitioners Dr. and Mrs. M. Joseph Reitman are Pro Se.

Respondent is represented by Joseph Patrick Hurley, Jr., Deputy Attorney General.

**DECISION AND ORDER**

JOSEPH S. YUCHT, ESQUIRE, VICE CHAIRMAN. This is the Tax Appeal Board of the State of Delaware (the "Board's") decision after a hearing on Petitioners' petition. The parties stipulated the following facts:

1. The taxpayer (Petitioners) owed a tax to Delaware for Personal Income for tax year 1988.
2. The tax due was \$8,971.00.
3. The State (State of Delaware) assessed penalties and interest against the taxpayer for Negligence, Failure to File the Return, and the Late Payment of the tax.
4. The penalties were abated by the State upon protest by the taxpayers.
5. Interest was calculated at the statutory rate of 1% per month from the date the tax was due, April 30, 1989, until it was paid. The tax was paid on or about May, 1991.
6. The taxpayer did not timely file a tax return for tax

year 1988.

7. The Division of Revenue did not send a bill for the taxes to the taxpayer or otherwise contact the taxpayer until sometime in February of 1991.

8. Interest at the statutory rate from the due date until the tax was paid on the tax due of \$8,971.00 is \$2,210.00.

9. The taxpayer did receive a refund of Maryland State taxes based upon his payment to Delaware of the 1988 taxes.

10. Prior to March 1991, no agency of the State of Delaware, no settlement attorneys or real estate agents, ever informed the taxpayer that he (they) was (were) responsible for income taxes to the State of Delaware.

In addition to the above "stipulated facts", the Board found that:

11. Petitioners were residents of the State of Maryland.

12. Petitioners owned a house in Bethany Beach, Delaware which they sold in 1988 and because of the sale, Petitioners incurred Delaware income taxes in the amount of \$8,971.00, which were assessed during 1991. Respondent also assessed penalties for late filing and interest on the amount of taxes from the date the tax was due until it was paid.

As stated above, Petitioners paid the taxes due and the Respondent abated the penalties assessed. The issue for the Board to decide is whether or not the assessment of interest on the unpaid tax is valid.

Petitioners contend that they should not have to pay interest on tax from the date the tax was due until the date it was paid.

They argued that no one (neither the real estate agents or settlement attorney) ever informed them that as a result of the sale of their Delaware property they could or would incur tax liability to the State of Delaware. They were "blissfully ignorant" of that fact until they received a tax assessment from the State of Delaware. They said that once they received the tax notice, they took steps to file the return and pay the tax due and thus they should only have to pay interest from the date they received the tax notice until the date the tax was paid. This was just a period of several months. They claimed they should not have to pay interest on a tax they did not know existed but agreed that once they knew about the tax, interest was due and owing from that date until it was paid.

Respondent contends that the payment of the interest at 1% a month from the date the tax is due until the date of payment is mandated by Delaware statute. It is imposed because during the period of time the tax is not paid, the taxpayers have the use of that money. Respondent further argues that this Board does not have the authority to waive or abate the imposition of interest on unpaid taxes.

Our system for the collection of taxes is one of voluntary compliance by the taxpayer. Each taxpayer is deemed to know what taxes he owes and that he will timely file the required return and timely pay the tax due. If he does not do so, then he not only must pay the tax owed, but also pay any late filing fees assessed and interest on the unpaid amount from the due date until the date of payment. In this case, Petitioners neither timely filed the

return nor timely paid the tax due. Accordingly, when Respondent discovered that fact, he assessed the taxes due, imposed late filing penalties and stated the amount of interest due to that date. Although Petitioners paid the tax assessed and Respondent abated the penalties, the interest remained unpaid. Under Delaware law, this Board does not have the authority to waive or abate interest. Therefore, the amount of the assessment of interest by Respondent is affirmed.

SO ORDERED this 10th day of May, 1996.

Joseph S. Yacht

Richard C. Anderson

[Signature]

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John Cordrey, Jr.