

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

**TED ACKERMAN,**  
Petitioner,

v.

**DIRECTOR OF REVENUE,**  
Respondent.

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) **Docket No. 1120**  
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Before: Joseph S. Yucht, Esquire, Chairman, John H. Cordrey, Esquire, Vice Chairman; David Eppes, and Regina Dudziec, Members.

Petitioner appeared *pro se*.

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

**FACTUAL DECISION**

John H. Cordrey, Esquire, Vice Chairman. This is the Board's decision regarding the facts of the above captioned case. 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 61 Lowry Drive, Wilmington, DE 19805.
2. A notice of determination indicating no extension requests were filed by Petitioner for the inheritance tax return of the Estate of Mary A. Kofler dated March 24, 1992 was mailed to Petitioner on March 25, 1992.
3. The amount in controversy is a penalty in the amount of \$1,896.00 assessed against Petitioner for his failure to timely file the inheritance tax return or a request for an extension.

4. The decedent, Mary A. Kofler, died on October 3, 1987 and the inheritance tax return for her estate was due by July 3, 1988.

5. By letter dated September 3, 1988 Petitioner requested an extension to file the inheritance tax return and enclosed a check anticipating the final tax liability. In such request Petitioner asserted that he "...first became aware of the existence of Delaware Inheritance Tax, by chance, within the past month. I believe it can be established that the lack of awareness was reasonable and not due to wilful neglect."

6. The failure on the part of the Petitioner was not due to his wilfully ignoring his responsibilities.

7. A penalty in the amount of \$1,896.00 was assessed against Petitioner for the two month delay in paying the inheritance tax due.

#### DISCUSSION AND DECISION

Petitioner asserts that the Respondent failed to properly deny the factual allegations of the complaint and therefore under this Board's Rules the facts are those contained within the petition and the Board must find in favor of the Petitioner. Petitioner misinterprets the Rules of the Board. The Respondent has specifically denied most, if not all, of the pertinent factual allegations contained within paragraph 5 of the original petition. Once the Respondent has placed the Petitioner on notice that the allegations of the petition have been denied, it is the burden of Petitioner to go forward with evidence to support the petition. Petitioner has failed to meet this burden.

Petitioner states that as there is no wilful neglect of his obligation to pay the taxes there should be no penalty assessed. Petitioner misstates the law. 30 Del.C. §1194 provides

in pertinent part: "...unless it is shown that such failure is due to reasonable cause..." Reasonable Cause is repeatedly distinguished from wilful neglect both in the statute and in this Board's prior rulings. Further, it is the duty of the petitioner to demonstrate that the failure was caused by "reasonable cause," and the proof that the failure was not due to Petitioner wilfully ignoring his responsibilities does not assist in determining whether or not there was reasonable cause. The Petitioner having failed to introduce evidence that his failure was due to reasonable cause, the assessment of the penalty was proper.

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

SO ORDERED, this 12<sup>th</sup> day of November, 1993.

Joseph S. Yucht  
Regina C. Anderson

John H. Cordery  
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