

TAX APPEAL BOARD OF THE STATE OF DELAWARE

Received  
January 13, 1995

HELEN MAE MORRISON )

Petitioner, )

v. )

DIRECTOR OF REVENUE, )

Respondent. )

DOCKET NO. 1185

BEFORE: Joseph S. Yucht, Esquire, John H. Cordrey, Esquire,  
Chairman, David C. Eppes, Regina Dudzic and Cynthia H. Jarman, Members.

Helen Mae Morrison, Pro Se.

Calvin Scott, Esquire, Deputy Attorney General for Respondent.

**FACTUAL DETERMINATION**

DAVID C. EPPES, MEMBER. The issue before the Board is a factual dispute as to whether or not Delaware state income tax returns for calendar years 1985, 1986 and 1987 were filed with the Division of Revenue by the Petitioner.

Respondent has issued its Notice of Determination assessing tax, interest and penalty for 1985, 1986 and 1987. The assessments were based on "proforma" tax returns prepared by the Tax Examiner assigned to the matter. Respondent contends that Petitioner never filed returns thus making it necessary for the State to estimate Petitioner's income and deductions and make an assessment based on these estimates.

Petitioner contends that the returns were filed. Petitioner further contends that there were errors made by the Tax Examiner in computing the tax, interest and penalty due for the years in question.

The Board must first make a factual determination as to whether the returns were filed with the Division of Revenue. A factual hearing was held in order to make this determination. At the

factual hearing, Petitioner was asked to produce evidence that the returns were filed. However, Petitioner was unable to produce any credible evidence to support her contention that the returns were filed.

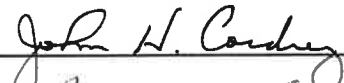
It is well established in Delaware law and the case history of this Board that the burden of proof of filing rests with the taxpayer. The Board understands that there is a remote possibility that the Division of Revenue could misplace a tax return. However, we do not think it would be possible for the Division to misplace three consecutive tax returns from the same taxpayer.

**FINDING**

The Board finds that the Petitioner has not met her burden of proof that the returns were filed. The Board directs the Parties to attempt to enter into a written stipulation showing the correct calculation of tax, interest and penalty for the years in question. The stipulation should be filed with the Board no later than February 10, 1995. If the Parties are unable to stipulate to the calculations, each Party should notify the Board in writing no later than February 10, 1995, at which time the matter will be set down for a further hearing.

IT IS SO ORDERED.

  
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Cynthia Hyde Jarman

  
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Regina C. Hudgins