TAX APPEAL BOARD OF THE STATE OF DELAWARE

JOHN L. KVOCHAK and)
PATRICIA S. KVOCHAK,)
Petitioners,)
)
V.) Docket No. 1197
)
DIRECTOR OF REVENUE,)
Respondent.)
)

Before: John H. Cordrey, Esquire, Chairman; David Eppes, Regina Dudziec, and Cynthia Hughes Jarman, Members.

Petitioners are pro se.

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

DECISION AND ORDER

John H. Cordrey, Esquire, Chairman. This is the Board's decision regarding this matter.

The Board finds that the Petitioners filed their 1990 tax return in 1991 as required. Subsequent to the filing of their return, an amended return was filed on July 6, 1994 seeking a refund for an alleged overpayment of taxes. Petitioners could not present any evidence that any claim, no matter what form, had been filed before the July 6, 1994 date.

30 <u>Del.C.</u> §1198 (which is now found in 30 <u>Del.C.</u> §539) provides that "A claim for credit or refund of an overpayment of any tax imposed by this chapter <u>shall</u> be filed by the taxpayer within 3 years from the time the return was filed... No credit or refund shall be allowed or made after the expiration of the period of limitations prescribed in this subsection for the filing of a claim or refund, unless a claim for credit or refund is filed by the taxpayer within such period."

As the claim for refund was filed more than three years after the return was filed, the statute prohibits the entertaining of the refund claim, no matter how meritorious the underlying refund claim. Statutes of Limitation are unquestionably harsh and unfair as applied in some instances. This is particularly the case when the refund claim is filed so close to the expiration of the Statute of Limitations (approximately two months). Unfortunately, the Board does not have the statutory authority to consider the equitable interests of the parties and vary from this rule.

Petitioners' appeal of the Respondent's Notice of Determination is DENIED and therefore the Notice of Determination is AFFIRMED.

SO ORDERED, this 16th day of October, 1997.

Rosina C. Wheelpie

andhin S. Garman