

TAX APPEAL BOARD OF THE STATE OF DELAWARE

JOSEPH & BARBARA TESTA,)
)
 Petitioners.)
)
 v.) Docket No. 1206
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

BEFORE: John H. Cordrey, Esquire, Chairman; Joseph S. Yucht, Esquire, Vice-Chairman; David C. Eppes, C.P.A., Regina Dudzic and Cynthia Hughes Jarman, Members.

Petitioners are pro se.

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

DECISION AND ORDER

This is the Board's decision after a hearing was held in the above matter. The question presented is whether Petitioners are entitled to a refund in the amount of \$118.15 for income taxes paid for calendar year 1990? For reasons set forth below, we have concluded that Petitioners are not entitled to the refund.

Petitioners contend they filed their 1990 Delaware Income Tax Return which indicated they were entitled to a refund of \$118.15. The deadline for filing the return was April 30, 1991. When Petitioners did not receive a refund, they filed a claim for refund on August 2, 1994.

Respondent contends (1) that it has no record of the return being filed as contended by Petitioners and (2) the claim for refund was not timely filed. Respondent states that 30 Del. C. §1198(a) requires that a claim for a refund of the overpayment of

a tax shall be filed by the taxpayer within 3 years from the time the return was filed. Since the due date of the filing of the return was April 30, 1991 and Petitioners had no proof of the date of the filing of the return, the filing of a claim for refund on August 2, 1994 would be more than 3 years from the latest date the return could have been filed timely. Accordingly, the Respondent denied the claim for refund. Petitioners then protested the denial of the claim for refund and in a Notice of Determination dated October 18, 1994 the Tax Conferee denied the protest. Petitioners appealed to the Tax Appeal Board.

On March 10, 1995 a hearing was held by the Tax Appeal Board. Petitioners testified that they prepared their 1990 Delaware income tax return and Barbara Testa mailed it. They offered no other proof of mailing or filing the return. Witnesses from the Division of Revenue testified that there was no record of the filing of Petitioners' 1990 income tax return in the system. Then, when Petitioners filed a claim for refund, it was denied because it was not timely filed.

Under Delaware law it is the burden of the Petitioners to prove by a preponderance of the evidence that they filed their 1990 Delaware income tax return. The Board finds that Petitioners did not carry that burden. Also, the provisions of 30 Del. C. §1198(a) require that the claim for refund be filed within 3 years from the time the return was filed and no refund shall be allowed after the expiration of the 3 year period. The Board denies Petitioners' claim for refund because it was not filed within the time period prescribed by the statute.

Based on the foregoing the Notice of Determination is affirmed.

SO ORDERED this 15th day of May, 1995.

Joseph S. Yucht,
Reginald L. Dudley,
Cynthia H. Jarman/ac

John H. Cordery
David C. Eppes/ac