

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

**ROBERT & REGINA WALTON**

Petitioners,

v.

**DIRECTOR OF REVENUE,**

Respondent.

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DOCKET NO. 1218

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

Robert & Regina Walton, Pro Se.

Jos. Patrick Hurley, Esquire, Deputy Attorney General for Respondent.

**DECISION AND ORDER**

DAVID C. EPPES, MEMBER.

The issue before the Board is whether the Board has jurisdiction to hear the Petition presented by the Petitioners. Respondent has prepared a Proposed Finding of Fact and Conclusions of Law which concludes that the Board lacks jurisdiction in this matter. This opinion is solely to address the issue of the Board's jurisdiction in the matter. All other issues brought before the Board in the Petition are moot in the event that the Board lacks jurisdiction to hear the matter.

The parties have stipulated that the records of the Division of Revenue reflect that on or about November 9, 1990, the Division of Revenue mailed to Petitioners an undated and unsigned notice of a Jeopardy Assessment. The Petitioners have argued that because the notice was undated and unsigned it was not a valid Jeopardy Assessment. The Board finds nothing in the statute governing

Jeopardy Assessments that requires that the assessment be either dated or signed. The parties have further stipulated that on or about November 16, 1990, the Petitioners mailed to the Division of Revenue a response to the Jeopardy Assessment. Since the Petitioners have conceded that they responded to the Jeopardy Assessment and, therefore, obviously received the Jeopardy Assessment, the Board finds that the Jeopardy Assessment was validly issued.


The next issue before the Board is whether the Petitioners response to the Jeopardy Assessment was sufficient to preserve their rights to litigate this matter before the Tax Appeals Board. Delaware Code Title 30, Section 561(c) states that the taxpayer shall file a request for reassessment accompanied by a bond or other security upon receipt of a Jeopardy Assessment in order to contest the assessment. Petitioners argue that upon receiving the Jeopardy Assessment they phoned a representative of the Respondent to offer an automobile as security in conjunction with their appeal.



It is the Petitioners' contention that this oral contact would be sufficient to satisfy the requirement for posting a bond or other security. However, there is no evidence before the Board to substantiate that such a bond was posted. It is the conclusion of the Board that the Petitioners have an affirmative duty to perfect the security or bond in order to preserve their rights to appeal the Jeopardy Assessment. Assuming that the discussions did take place with the representative at the Division of Revenue as the Petitioners contend, no security was ever perfected. It is the opinion of the Board that the Petitioners had an affirmative duty to request reassessment and to deliver and perfect the bond or other security. Using the example of a vehicle, for instance, the Petitioners might deliver the title to the vehicle to hold pending the reassessment. It would also have been appropriate to receive from the Director of Revenue written acknowledgment of the bond, and the adequacy of the bond in relationship to the amount of the assessment. It was the duty of the Petitioners to satisfy these important aspects of the appeal procedure.

FINDING

The Board concludes that a taxpayer who is in receipt of a Jeopardy Assessment has certain very clear procedural steps that they must take in order to be able to request a reassessment. Those requirements include a written request for reassessment, which we find the Petitioners did make in this case. The second requirement is that the request for reassessment be accompanied by bond or other security. The Board concludes that Petitioners failed to meet their duty to post a bond or other security. Accordingly, the Jeopardy Assessment became final after the passage of ten days. Because the Jeopardy Assessment became final, the Board has no jurisdiction to hear this matter. Accordingly, the petition is denied.

IT IS SO ORDERED.

  
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John H. Conroy  
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Joseph S. Yunkert.  
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Regina C. Andjic  
  
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Cynthia H. Garner

2/9/96