

TAX APPEAL BOARD OF THE STATE OF DELAWARE

PHILLIP A. DYE and)
REBECCA J. DYE,)
Petitioners,)
)
v.)
)
DIRECTOR OF REVENUE,)
Respondent.)
_____)

Docket No. 1248

Before: John H. Cordrey, Esquire, Chairman; David C. Eppes, Regina Dudzic, and Cynthia H 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 Petitioners' petition and Respondent's request for damages pursuant to 30 Del.C. §332.

The Board held a factual hearing and after the hearing the parties agreed that the matter was ripe for decision without the need for further briefing or argument.

The Petitioners presented testimony and their "Petition." The Petition is our standard form but in paragraph 4 the Petitioners contend: "The determination of tax set forth in said notice of assessment is based upon the following errors: a.[Blank], b.[Blank], and c.[Blank]." In paragraph 5 of the Petition the Petitioners provide. "The facts upon which the petitioner rely as the basis for this proceeding are as follows: a. The Commercial Affidavit of Income Tax Status and Points of Authority A copy is attached and marked (Exhibit B)" Exhibit B attached to the petition is an eighteen page document which contains such facts as "7. A workman is worthy of his hire. 8. All

are equal under the law." [Petitioners' petition, Exhibit B at page 1.] During Petitioners' testimony, in conjunction with the Petition, the following facts were determined.

Petitioners are husband and wife who live at Townsend Delaware. Petitioners filed income tax returns with the State of Delaware for: 1992 showing income of \$49,863, 1993 showing income of \$47,397, and 1994 showing income of \$42,685. For each of said years Petitioners paid the appropriate Delaware income tax. Thereafter Petitioners claimed a refund of all of the Delaware income tax paid for said years. A Notice of Determination dated April 26, 1996 denied Petitioners' claims for refunds which Petitioners have now appealed to this Board.

Petitioners contend that there are a number of reasons that they are not subject to tax by the State of Delaware. A majority of these arguments are bits and pieces of cases or statutes taken out of context and mixed together in an attempt to justify their refund claim. For instance, Petitioners claim that the Delaware income tax violates the Constitution as the taxes are not "uniform." Petitioners contend that if an income tax could be constitutional, (a point which they would not concede) it must be paid by all citizens in the same amount without regard to the person's income or other status. This conclusion is unsupported by the case law and is contrary to long recognized public policy.

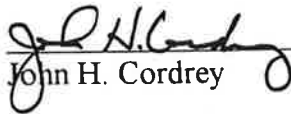
Petitioners' arguments are convoluted and totally without merit. It is apparent that Petitioners have been convinced by themselves or others that the income tax laws of the United States and Delaware only apply to those who voluntarily wish to pay. In fact during Mr. Dye's testimony, he indicated that upon the payment of his refund he would voluntarily pay the amount he thought appropriate to the State for the services which he enjoyed. While Petitioners' positions are extremely appealing to even the most loyal of citizens, they are not supported by case law, statutes or the Constitution.

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


Respondent contends that the Petitioners' claim for a refund in this case should be subject to the penalties set forth in 30 Del.C. §332. In support of said contention Mr. Dye was cross-examined regarding the source of the many exhibits. Mr. Dye acknowledged that many of the

documents were acquired from mailings from various organizations. The "Special Notice" found on pages 16 and 17 of Petitioners' Exhibit B is enlightening. After warning that any inference that Petitioners are Tax Protestors would be considered "defamation of character" Petitioners continue by stating that "None of these facts have been found to be 'frivolous' by any court, when argued in their exact and proper contest [sic]." This Board finds that the positions of Petitioners are frivolous. The Board also finds that the positions of Petitioners are without reasonable basis. Respondent has requested damages in the maximum amount allowable by law, \$5,000. The Board finds that the State shall be awarded damages in the amount of \$500.00 from Petitioners pursuant to §332.

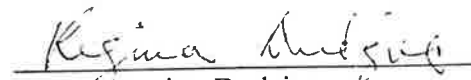
SO ORDERED, this 27 day of December, 1996.



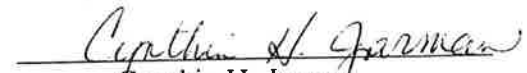
John H. Cordrey



David C. Eppes



Regina Dudzic



Cynthia H. Jarman