

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

<b>PHILLIP A. DYE and</b>	)	
<b>REBECCA J. DYE,</b>	)	
Petitioners,	)	
	)	
v.	)	<b>Docket No. 1262</b>
	)	
<b>DIRECTOR OF REVENUE,</b>	)	
Respondent.	)	
	)	

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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 Respondent's motion to dismiss for lack of jurisdiction.

The Board finds that the Notice of Determination was mailed on July 31, 1996. 30 Del.C. §525 provides that the Notice of Determination is final upon the expiration of 60 days from the mailing of said notice "...unless within such period the taxpayer seeks review of the Director's determination pursuant to § 544 of this title." Petitioner had 60 days, pursuant to this statute, to file a petition for review by this Board. The 60 days expired on September 30, 1996. Petitioner filed a "petition" with the Board that was dated October 16, 1996 but was not received until October 21, 1996 by the Board's staff.

Petitioners claim that, under the 14th amendment of the United States Constitution, the State can not deprive citizens of their rights and the statute, and therefore the effect of 30 Del.C. § 544 of depriving this Board of jurisdiction is unconstitutional. Petitioners cite

no authority for their position and it is without question that the legislature may create reasonable statutes of limitation during which matters must be presented. Petitioners claim is without merit.

Petitioners also claim that "...any judiciary proceeding that would deny a citizen of the United States due process, then that particular judiciary system could, in fact, be held liable for the violation of Title 18 Section 242 and 243, which basically states that it is a crime for any entity of the government to deny the rights of a citizen of the United States." [Transcript of the Board's hearing on this matter at page 12.] Again, Petitioners cite no case law to support their position. Contrary to the Petitioners' assertion, due process is provided by the administrative review of their protest and the issuance of an administrative finding. Their "due process" rights to appeal that decision were not denied by Respondent or this Board, but rather by their failure to timely perfect their appeal. Therefore this claim is likewise without merit.

As the Petition was not timely filed the Board has no jurisdiction to review the matter. The parties, even if both were willing, may not confer jurisdiction upon the Board. As the legislature has not granted jurisdiction to the Board, it may not act.

Respondent's motion to dismiss for lack of jurisdiction is therefore granted, IT IS SO SO ORDERED, this 11<sup>th</sup> day of April, 1997.

John W. Cordrey  
Regina E. Medpue

[Signature]  
Christina A. Jarman