

RECEIVED

SEP 10 1999

TAX APPEAL BOARD
STATE OF DELAWARE

TAX APPEAL BOARD OF THE STATE OF DELAWARE

BASIL H. SELDEN,)	
)	
Petitioner)	
)	
)	Docket No. 1304
v.)	
)	
DIRECTOR OF REVENUE,)	
)	
Defendant.)	

BEFORE: John H. Cordrey, Esquire, Chariman; Todd C. Schiltz, Esquire, Vice Chariman; David C. Eppes, C.P.A.; Regina Dudzic and Cynthia Hughes, Members.

Basil H. Selden, Pro Se.

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

DECISION AND ORDER

CYNTHIA HUGHES, MEMBER. This is the Board's decision after a hearing held on March 12, 1999.

The issue before the Board is whether the Petitioner should be refunded excess license fees for tax years 1994, 1993, and 1992 due to an ambiguity in Section 539 of Title 30 of the Delaware Code.

Sometime after September of 1997 Petitioner became aware of section 2301(h) of Title 30 of the Delaware Code which provides:

(h)Any person 65 years of age or older whose gross receipts are less than \$5,000 per year shall pay one fourth of the annual occupational license tax specified in subsection (a) of this section.

On or about February 24, 1998 petitioner filed claims for refund of the excess license fees paid for tax years 1992 through 1997. The Director honored the claims for refund for tax year 1997, 1996 and 1995, but denied the claims for refund for tax year 1994, 1993 and 1992 based on the Statute of Limitation, 30 Del.C., Sec. 539 which provides:

(a) Claim for credit or refund of an overpayment of any tax imposed by this title or Title 4 shall be filed by the taxpayer within 3 years from the last date prescribed for filing the return (or in the case of license fees or taxes under Part III of this title, 3 years from the expiration date of the license to which such overpayment relates)...

The Petitioner claims that "The code should be revised to isolate either one individually rather than to combine them together." and that "Because of the ambiguity, which is a technicality, a refund in the amount of \$168.75 should be allowed."

Based on the Statute of Limitation as stated above, the time allowed to file a claim for refund for tax years 1994, 1993, and 1992 expired on December 31 of 1997, 1996, and 1995 respectively. Therefore the Petitioner's claim for refund filed on or about February 24, 1998 was not made in a timely manner.

The Board finds that the Respondent was correct in denying the refund of claims for tax year 1994, 1993, and 1992 based on the Statute of Limitation, 30 Del.C, Sec. 539. As to the Petitioner's claim that he should receive a refund due to a technicality of ambiguity, the Board finds that Paragraph (a) of Sec. 539 clearly addresses license fees as well as taxes and therefore finds that it upholds the denial of refund. The Petitioner also suggests that the code should be revised. The Board does not have the jurisdiction to decide such matters.

Based upon the foregoing the Notice of Determination is affirmed.

SO ORDERED this 10th day of September, 1999.

Cynthia Hughes

Regina C. Dudgeon

John W. Conroy

Local C. Smith
