

BEFORE THE TAX APPEAL BOARD

STATE OF DELAWARE

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**TAX APPEAL BOARD
STATE OF DELAWARE**

BERNADETTE COUPE,)	
)	
Petitioner,)	
)	
v.)	No. 1340
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

Before: Regina Dudzic, Cynthia Hughes, Todd C. Schiltz, Esq., and Joan Winters, members of the Tax Appeal Board. Opinion by Todd C. Schiltz, Esq.

OPINION AND ORDER

Presently before the Board is respondent's motion to dismiss. The issue is whether the Board lacks jurisdiction because petitioner failed to file a timely appeal with the Board. For the reasons set forth below, we conclude the petitioner did fail to file a timely appeal and that, as a result, the Board lacks jurisdiction over this matter.

FACTS

The Division of Revenue determined that petitioner had failed to pay the total taxes due in 1999. Petitioner appealed this determination to the Division pursuant to 30 Del. C. § 523.

On January 24, 2000, tax conferee Harry H. Rhodes, III sent petitioner a letter, pursuant to 30 Del. C. § 524, advising the petitioner that the Division had denied her appeal. The letter was written on Division of Revenue stationary and stated that if the petitioner had any questions she should contact the conferee. The letter also stated that if petitioner did not agree with the

determination, she had 60 days to file an appeal and that if she wanted to file an appeal, she should contact the secretary to the Board. The letter provided a phone number and mailing address for the secretary.¹

Petitioner contends that on or about January 29, 2001, she sent the conferee a letter stating her intent to appeal the Division's decision.² The January 29 letter states that petitioner is mailing in two copies of the letter "hoping that at least one copy will make it through to the correct authorities."

On April 24, 2001, petitioner filed a notice of appeal with the Board. On May 15, 2001, the Division filed a motion to dismiss petitioner's appeal arguing petitioner failed to file a timely appeal and that, as a result, this Board lacks jurisdiction over this matter.

ANALYSIS

Section 525 of title 30 of the Delaware Code provides that a taxpayer may appeal the determination of the Director entered under Section 523 or 524 of title 30. 30 Del. C. § 525. In most circumstances, a taxpayer has 60 days to file an appeal. 30 Del. C. § 544. If no appeal is timely filed, the determination becomes final. 30 Del. C. § 525. It is well settled that once the determination becomes final by operation of law, this Board is without jurisdiction to review the determination.

¹ At argument on this motion, petitioner conceded she did not read the entire contents of the January 24 letter and, in particular, did not review the paragraphs regarding who she should contact to perfect her appeal.

² Petitioner states she can produce a witness who will testify that she sent the letter. The Director has been unable to determine whether the conferee ever received a copy of the January 29 letter and, if he did, what he did with the letter.

It is undisputed that the Board did not receive a Notice of Appeal from petitioner within 60 days of January 24, 2000 and, thus, that petitioner did not file a timely appeal. Petitioner argues that she simply misdirected her appeal and that the following facts dictate that the Board consider her appeal, notwithstanding her failure to meet the statutory requirements: (i) she is acting *pro se*; (ii) she sent in two copies of her appeal in hopes that one would find its way to the correct authorities; (iii) she sent materials to the conferee, the agent of the Director, and thus the Director had notice of her intent to appeal; and (iv) the conferee's January 24, 2001 letter stated that if the petitioner had any questions she should contact the conferee.

While the board is sympathetic to petitioner, it cannot take up her appeal. Petitioner misdirected her appeal even though she was provided with complete and accurate information regarding the steps she had to take to file an appeal. The fact she failed to read and follow the instructions is an issue of her own making and she must bear the consequences of her action. This Board lacks the jurisdiction to save her from her own conduct. See Smith v. First State Exxon and the /unemployment Insurance Appeal Board, 1997 WL 528235 (Del. Super) (finding petitioner failed to file timely appeal when petitioner wrote letter to judge rather than docketing an appeal with the prothonotary).

SO ORDERED this 16th day of April, 2004.







