

**BEFORE THE TAX APPEAL BOARD**

**RECEIVED**

**STATE OF DELAWARE**

**APR 16 2004**

PHILLIP AND ELLEN DEITRICH )  
 )  
 Petitioners, )  
 )  
 v. )  
 )  
 DIRECTOR OF REVENUE, )  
 )  
 Respondent. )

**TAX APPEAL BOARD  
STATE OF DELAWARE**

No. 1346

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**

This matter comes before the Board after an evidentiary hearing and argument of the case on the merits. Petitioners contend they are entitled to a refund of \$3,655.88 for the 1999 tax year because they had no income during the period in question. For the foregoing reasons, petitioners' request for a refund must be denied. The Board further determines that, under the circumstances, petitioners should be assessed a penalty of \$ 500.00 pursuant to 30 Del. C. § 332.

In 1999, petitioners were residents of Delaware and filed a joint tax return. In 1999, petitioners received wages in exchange for the services they provided their employers and these wages were reported on W-2 forms received by the petitioners. Petitioners did not pay taxes on these wages because, they contend, wages are not "income" subject to taxation by the federal government or the State of Delaware.

Respondent sent petitioners notice of deficiency for unpaid tax, interest and penalties in the amount of \$3,665.88 which petitioners ultimately paid. In this appeal, petitioners ask the Board to refund the \$3,665.88 they paid to the State of Delaware. Respondent argues petitioners are tax protestors, that their request for a refund should be denied and that the Board should assess a penalty against petitioners pursuant to 30 Del. C. § 332 because the argument they have advanced is frivolous.

Petitioners argument is that wages they earn is not income as that term is defined under Delaware and federal law. Petitioners rely on bits and pieces of cases and statutes taken out of context to support their position. Petitioners' arguments are without merit. It is well recognized that wages are income subject to taxation and the fact petitioners would rather not pay taxes is of no moment. Petitioners' request for a refund must be denied.

The Board further finds that an assessment of a penalty is appropriate in this case. The grounds petitioners set forth for why they should not have to pay taxes are frivolous and not supported by any reading of the law. The Board concludes petitioners should be assessed a penalty of \$ 500.00 .

SO ORDERED this 16<sup>th</sup> day of April, 2004.

*Paul C. Siff*

*Cynthia L. Hughes*

*Regina C. Anderson*

*John M. Winter*