

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

DANIEL AND CAROL TURNER,

Petitioners,

v.

DIRECTOR, DELAWARE DIVISION OF REVENUE,

Respondent.

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) Docket No. 1417  
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**OPINION**

Director, S. — Vice-Chair

Petitioners — *Pro Se*

Respondent — Joseph Patrick Hurley, Jr., Esquire

Dated: July 12, 2006

## INTRODUCTION

The issue presented is whether or not certain cash and non-cash charitable deductions claimed for tax years 2001, 2002 and 2003 by petitioners Daniel P. and Carol D. Turner (the "Petitioners") should be allowed. The Board has determined that the Petitioners have failed to meet their burden of proof with respect to substantiating the charitable deductions, and, as a result, the Petitioners' petition is denied.

On December 15, 2004, the Director of the Delaware Division of Revenue (the "Respondent") sent the Petitioners Notices of Deficiency for tax years 2001, 2002, and 2003. The Notices of Deficiency claimed that certain charitable deductions claimed on the Petitioners' 2001, 2002, and 2003 Delaware tax returns should not be allowed. The Petitioners protested each Notice of Deficiency, and on March 24, 2005, the Respondent issued a Notice of Determination, which granted in part and denied in part the Petitioners' protest. In particular, the following deductions were not granted and remain in dispute here: (a) cash contributions to the Petitioners' church in the amount of \$12,948 for each of 2001, 2002 and 2003; (b) cash contributions to the United Way in 2001 of \$1103, in 2002 of \$1108 and in 2003 of \$462; and (c) non-cash contributions to the Clothing Bank of Delaware in 2001 for \$500, in 2002 of \$500, and in 2003 of \$2800.

The refusal to allow these deductions resulted in a tax balance due from the Petitioners in the total amount of \$2,977.02 for the three (3) taxable years 2001, 2002, and 2003. The Respondent also refused to abate penalties based on an assertion of reasonable cause relating to the failure to correctly report deductions for charitable contributions claimed.

The Petitioners allege that the Respondent failed to properly apply 30 Del. C. § 1109 relating to the allowance of itemized deductions claimed on Schedule A of the

Petitioners' corresponding federal income tax return, and that when the deductions are properly allowed the Petitioners tax liability of \$2,977.02 is eliminated.

### FACTS

A factual hearing was held before the Board on September 1, 2005. The facts set forth herein are derived from the evidence presented at that hearing.

The Petitioners represented themselves at the hearing and introduced documentary evidence and testimony from Mr. Turner in support of their claim. The Petitioners submitted a computer printout they labeled "Cash and Non-Cash Records," which they relied on as proof of the cash and non-cash charitable contributions they made in 2001, 2002, and 2003. Mr. Turner testified that the printout was not prepared or updated contemporaneously with the making of the charitable contribution but, rather, was augmented "from time to time" when he got around to this task. He further testified that he "polished it up to come in [to the hearing before the Board] so it's a little more clear to everyone who uses it." Additionally, he could not say specifically when he entered the information on the printout, but he did assert that it was timely.

#### A. Cash Contributions to Petitioners Church

The Petitioners seek a deduction for charitable contributions to their church in the amount of \$12,948 in each of 2001, 2002, and 2003. The Petitioners contend that they contribute more than this amount to their church, but that they only seek a deduction as to this amount. The Petitioners recognize and are aware that federal Treasury Regulations require them to obtain a receipt for any cash contribution equal to \$250 or more and that \$12,948 represents the maximum deduction they can claim, assuming the Petitioners contribute \$249 to their church each and every week of the year ( $\$249 \times 52 \text{ weeks} =$

\$12,948), without submitting receipts for these contributions. Mr. Turner testified that the Petitioners' church contributions are anonymous and that they do not want to obtain receipts because they want to keep it this way. He also testified that, other than the computer printout, he has no other documents to support the charitable contributions to the church, such as receipts, cancelled checks, or statements from the donee church.

B. United Way Cash Contributions

With respect to the United Way contributions, the Petitioners testified that these contributions mainly took the form of payroll deductions. Mr. Turner testified that he has no records, such as payroll stubs, to substantiate these contributions. Again, the only documents the Petitioners introduced to support this claim was the printout that Mr. Turner prepared. The cash contributions in each year exceed \$250.

C. Non-Cash Contributions to Clothing Bank of Delaware

As to the non-cash contributions to the Clothing Bank of Delaware, the printout states that the Petitioners contributed clothes to this organization on one (1) occasion in each of three (3) years, and that the clothes had a value of \$500 in 2001 and 2002 and \$2800 in 2003. Mr. Turner testified that in 2003 the Petitioners contributed eight (8) bags of clothes weighing 50 to 60 pounds, but that the total was approximately 200 pounds of clothes. Despite claiming deductions for three (3) donations, the Petitioners submitted one receipt for the clothes in 2003, and this receipt did not itemize or describe the clothes that were contributed, although it indicated that approximately 200 pounds of clothes were contributed.

## OPINION

For income tax purposes, the State of Delaware looks to federal law relating to the income tax treatment of various issues. 30 Del. C. § 502. Delaware is referred to as a “piggyback” state because State income taxation is based on items of income and deductions that are includible and allowable for federal income tax purposes, subject to specific modifications and adjustments. 30 Del. C. §§ 1105, 1121, 1123. With respect to charitable contributions, Delaware looks to federal law, subject to specific adjustments. 30 Del. C. § 1109.

Section 1.170A-13(a)(1)(iii) of the Treasury Regulations provides that a taxpayer may substantiate charitable contributions by different methods, and that one method is by keeping (and providing upon request) “other *reliable* written records . . . .” (Emphasis added). In all events, the burden is on the taxpayer to establish reliability. This particular Treasury Regulation requires that if the substantiation is based on a journal or similar type of record, the same must be kept contemporaneously with the making of the charitable contribution, and one factor to consider in determining reliability is the regularity of the taxpayer’s recordkeeping procedures.

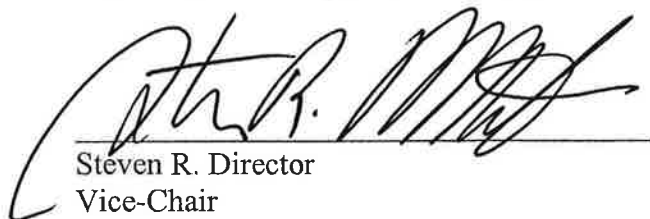
The Board does not believe that the Petitioners have met their burden of proof with respect to the claimed charitable (both cash and non-cash) deductions. Accordingly, the Board does not find that the records submitted either at the examination level or at the Board’s hearing were reliable.

With respect to the requirement that records be contemporaneous, the Board notes that although Mr. Turner testified that he kept the records on his computer, that which was submitted was not submitted to the Division of Revenue’s examining agent at the time of the return examination. The Board also notes that it was prepared for the Board’s

hearing and was “polished.” Additionally, despite the sizeable level of contributions, not one record was submitted from the church, no address was provided for the church, and no payroll records were submitted to support the charitable deductions that were allegedly made through payroll deductions. In short, other than a printout from the Petitioners’ computer, the Board has not seen one piece of evidence substantiating approximately \$48,600 in cash contributions, and has seen only one (1) receipt, which lacks a description of the clothing, cost, acquisition date, or fair market value (to support approximately \$3,800 of charitable deductions). (See Treas. Reg. § 1.170A-13(b)). Thus, considering that the Petitioners have the burden of proof on substantiating charitable contributions, and the method that they chose was by providing “other reliable, written records,” and that the same must be contemporaneous and be kept with regularity, the Board finds in favor of the Respondent and denies the claimed cash charitable contributions for the years 2001, 2002, and 2003, and the non-cash charitable contribution for the same years.

This result is consistent with the basic principle of income taxation that the Respondent’s determinations are presumed correct and that the Petitioners bear the burden of proving otherwise. *Welch v. Helvering*, 290 U.S. 111, 115 (1933); Tax Appeal Board Rule XVIII. The Petitioners have the burden of substantiating the claimed deductions, and they have failed to meet their burden of proof. *Hvadesky v. Commissioner*, 65 T.C. 87, 90 (1975), *aff’d per curiam*, 450 F.2d 821 (5th Cir. 1976).

For the reasons stated, the Board denies the Petitioners’ petition as to the claimed charitable deductions.

  
Steven R. Director  
Vice-Chair