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TAX APPEAL BOARD  
STATE OF DELAWARE

TAX APPEAL BOARD OF THE STATE OF DELAWARE

STEPHEN R. SIMPSON and VISIONS UNLIMITED, INC., )  
 )  
 Petitioners, )  
 )  
 v. )  
 )  
 DIRECTOR OF REVENUE, )  
 )  
 Respondent. )

Docket No. 1444

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 VISIONS UNLIMITED, INC., )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 DIRECTOR OF REVENUE, )  
 )  
 Respondent. )

Docket No. 1450

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 VISIONS UNLIMITED, INC., )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 DIRECTOR OF REVENUE, )  
 )  
 Respondent. )

Docket No. 1456

BEFORE: Todd C. Schiltz, Esq., Chairman, Steven R. Director, Esq., Vice-Chairman, and Regina Dudziec, Cynthia L. Hughes and Joan M. Winters, CPA, Members

Chris D. Galligan, CPA, for Petitioners

John S. McDaniel, Esq., Deputy Attorney General for Respondent

DECISION AND ORDER

On October 31, 2007, the Tax Appeal Board issued its final opinion and order ("Opinion") in Docket No. 1444 finding that (i) the Board had jurisdiction to consider the matter

before it; (ii) the Director of Revenue properly determined that petitioner Visions Unlimited, Inc., a subchapter S corporation, had failed to pay estimated taxes on behalf of its nonresident individual shareholder Stephen R. Simpson for tax year 2005 as required by 30 *Del. C.* § 1158(a), (iii) the Director properly determined that Visions should correct its failure and pay the State of Delaware estimated taxes for Simpson, and (iv) the Director properly determined that Visions should pay certain interest and penalties due as a result of its failure to pay Simpson's estimated taxes and its failure to file timely corporate tax returns.<sup>1</sup> On November 13, 2007, Visions filed a Motion to Vacate Decision and Order requesting that the Board vacate its Opinion. This is the Board's decision on Visions' Motion to Vacate.

After review of the parties' submissions on the Motion to Vacate, the Board has concluded that it made no errors in connection with its determination that Visions was required to remit estimated taxes on behalf of Simpson and that the Director properly sought to compel Visions to pay the State of Delaware the amount of Simpson's estimated taxes that it had failed to remit. Likewise, the Board has concluded that it made no errors in determining that Visions should pay interest and penalties for its failure to remit Simpson's estimated taxes and its failure to file timely tax returns. All of the arguments Visions raised with respect to the Board's substantive decisions either restated arguments that the Board already had considered and

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<sup>1</sup> In addition to Docket No. 1444 which concerns, among other things, Vision's failure to pay estimated taxes on behalf of Simpson for the 2005 tax year, Visions has filed petitions related to its failure to pay estimated taxes for Simpson during the 2004 and 2006 tax years. See Docket Nos. 1450 and 1456. The fundamental issue - can Visions be required to pay estimated taxes on behalf of Simpson and can it be required to pay penalties and interest for failing to make such payments - is the core issue in each of these cases.

rejected and/or failed to identify a legal or factual issue that the Board misapprehended. As a result, Visions' arguments provide no reason to set aside our Opinion.<sup>2</sup>

In addition to challenging the Board's substantive decision, Visions has raised a hyper-technical procedural issue related to its receipt of the notice of proposed assessment pursuant to 30 *Del. C.* § 521. Specifically, although it is undisputed that "[o]n or about September 25, 2006, Visions received the [notice of proposed assessment] from the Director," that "Visions timely requested a review of this notice" by the Director's Tax Conferee, that "the Tax Conferee denied the request for review," and that "Visions petitioned the Tax Appeal Board for a re-determination of the deficiency set forth by the Director," (Petitioners' Motion to Vacate Decision and Order at 6), Visions contends that it has not received a proper notice of assessment because the notice of assessment it did receive was not sent to its last known address by certified or registered mail. Visions further contends that, because the notice of proposed assessment was not delivered to it in the appropriate manner, all of the proceedings that follow the delivery of the notice - its own request for a review of the notice, the Director's determination on the issue and the proceedings before the Board that Visions initiated - are meaningless. According to Visions, the process of proposed assessment, determination and consideration by the Board must start anew because it did not receive the notice by registered or certified mail at its last known address.

While Visions' hyper-technical argument ignores the fact that it indisputably was aware of the pertinent legal and factual issues as a result of its receipt of the notice of proposed assessment and it took action based on this information, Title 30, Section 521(e) of the Delaware

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<sup>2</sup> Tax Appeal Board Rule 21 provides that "[r]ehearings, rearguments, . . . or additional proceedings shall be granted under such circumstances and upon such terms as the Board deems to be just." The Board relies on the standards established under Superior Court Rule 59 and 60 to determine when reargument will be allowed and granted. Tax Appeal Board Rule 24.

Code provides that a notice of proposed assessment issued by the Director "shall be mailed by the Director . . . (by certified or registered mail if the amount of the proposed assessment exceeds \$500) to the taxpayer at the taxpayer's last known address." This language is clear and mandatory.

While Visions' argument exalts form over substance, we have determined that the better course is to vacate our Opinion, instruct the Director to issue a supplemental notice of proposed assessment for tax year 2005, if he so chooses, and for the parties to proceed through the process outlined in Sections 521-525 and 544 of Title 30, if they so choose. The supplemental notice shall be issued pursuant to 30 *Del. C.* § 521(d) and shall be mailed on or before March 3, 2008.

All proceedings in Docket Nos. 1444, 1450 and 1456 shall be stayed until the later of the date the process outlined in Section 521-525 of Title 30 is concluded with respect to the supplemental notice or the date Visions exercises its rights under 30 *Del. C.* § 544 by advising the Board in writing that it intends to appeal any new notice of determination issued by the Director. If, as the Board anticipates, Visions files a protest to the supplemental notice, the Director denies the protest through the issuance of a notice of determination and Visions elects to appeal the Director's determination, such an appeal will proceed in Docket No. 1444 and no new petition need be filed before the Board.<sup>3</sup> If the matters raised in Docket No. 1444 are again before the Board -- this time cleansed of their purported procedural infirmity -- we will deal with the substantive issue once again. In such an event, Docket Nos. 1444, 1450 and 1456 will be consolidated so that the Board can address the common issue presented by all three cases.

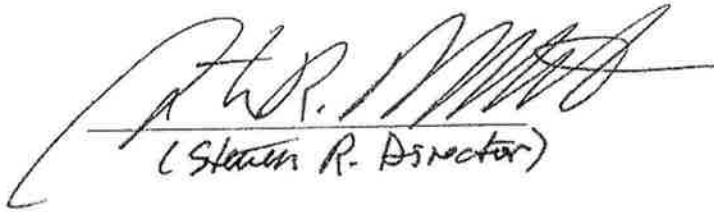
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<sup>3</sup> The parties should likewise follow the process outlined in Sections 521-525 and 544 in Docket No. 1456 with respect to the recently issued notice of assessment applicable to that proceeding. If that process does not resolve the dispute, as seems likely, Visions should advise the Board of its intent to appeal the Director's notice of determination. The appeal for the 2004 tax year can then proceed in Docket No. 1456.

The stay of docket numbers 1444, 1450 and 1456 shall not preclude any party from advising the Board on the status of the process set forth in Sections 521-525 and 544 of Title 30.

  
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(Steven R. Asmator)

Date: February 14, 2007

The stay of docket numbers 1444, 1450 and 1456 shall not preclude any party from advising the Board on the status of the process set forth in Sections 521-525 and 544 of Title 30.

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*Cynthia L. Hughes*

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Date: February 14, 2008

The stay of docket numbers 1444, 1450 and 1456 shall not preclude any party from advising the Board on the status of the process set forth in Sections 521-525 and 544 of Title 30.

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*Jean M. Winters, CPA*

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Date: February 14, 2008