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TAX APPEAL BOARD
STATE OF DELAWARE

BEFORE THE TAX APPEAL BOARD
OF THE STATE OF DELAWARE

LOUISA C. MANKIN, TRUSTEE,)
)
 Petitioner,)
)
 v.)
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

Docket No. 1479

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

Lynn Mankin, through power of attorney, for Petitioner

Stuart B. Drowos, Esq., Deputy Attorney General for Respondent

This case involves a dispute over the payment of income taxes by a trust established by the late Victor J. Mankin. For the reasons set forth below, the Board determines that it lacks subject matter jurisdiction over the dispute and, accordingly, dismisses the Petitioner’s petition.

Statement of Facts

During his life, Victor J. Mankin established a residuary trust. Upon his death, Petitioner, Mr. Mankin’s now 90 year old widow, became the trustee of the trust. In March 2001, Petitioner filed a tax return on behalf of the trust for the year ending December 31, 2000 (the “2000 Tax Return”). The 2000 Tax Return indicated that the trust owed income tax to Delaware in the amount of \$1,164.00.

Although the 2000 Tax Return was filed in March 2001, there is no evidence that any representative of the Director of Revenue (“Director”) attempted to contact Petitioner regarding the 2000 Tax Return prior to October 2008. On or about October 20, 2008, seven and one-half

years after the 2000 Tax Return was filed, the Director sent Petitioner a “Notice of Fiduciary Tax due Pursuant to title 30 Delaware Code, Sect. 552 or 1212” (the “October 2008 Notice”) (Petition Ex A, Item 1). The October 2008 Notice indicated that the trust owed Delaware \$1,164.00 in income taxes for 2000, the same amount reflected as being due on the 2000 Tax Return, and an additional \$799.71 in penalties and interest.

The 2000 Tax Return on file with the Director contains the handwritten notation “NO CK.” (Petition Ex C). The Director contends this notation means that no check was submitted with the 2000 Tax Return and, therefore, that the taxes reported as due on the 2000 Tax Return remain unpaid and due. The Director has offered no explanation of why he failed to pursue the alleged non-payment for seven and one-half years. There is no evidence in the record indicating who made the notation on the tax return, when the notation was made on the tax return or whether the notation on the return is accurate.

Upon receipt of the October 2008 Notice, Petitioner’s representatives searched her records for evidence of a check and contacted financial institutions to determine if they had copies of any canceled check evidencing payment. Petitioner’s representatives were unable to locate any personal records evidencing payment and the financial institutions advised her that they do not retain records extending that far back in time.

Petitioner’s representatives also contacted an attorney and, based on advice of counsel, concluded that “pursuant to 30 Delaware Code, Section 531(a), [Petitioner] should not be liable for payment of this tax all these years after the return was filed.” (Petition Ex D, Item 3).

Petitioner sent the Director a letter indicating that any effort to collect the taxes was time barred. (Petition Ex. B, Item 1).¹

On April 17, 2009, the Director's tax conferee sent Petitioner a Notice of Determination which rejected Petitioner's argument that the effort to collect any allegedly unpaid tax was untimely. (Petition Ex. F). The Notice of Determination stated that "If you do not agree with this determination, the law provides that you may file an appeal within sixty (60) days of the date of this notice with the Tax Appeal Board." *Id.*

Petitioner filed a timely appeal with the Tax Appeal Board. One of the issues raised in the appeal was whether the Director's effort to collect the tax and penalty at issue was time barred by 30 Del. C. § 531. As this was a threshold issue that could resolve the matter, the Board directed the parties to brief this issue at the outset. In the course of that briefing, the Director raised the issue of whether the Board had subject matter jurisdiction over the dispute. The Director argued that this is a simple collection matter and the only issue is whether or not a check had been submitted to pay the amount due, an issue over which the Board lacks subject matter jurisdiction.

¹ In pertinent part, Section 531(a) provides that "a notice of assessment under § 521(c) of this title shall be mailed within 3 years after the return was filed" In support of her time bar argument, Petitioner argued that the October 2008 Notice she received was a "notice of assessment under 521(c)" and that it is untimely as it was sent more than three years after the 2000 Tax Return was filed. The Director disputes Petitioner's characterization of the October 2008 Notice, contending that it is mere notice of his efforts to collect tax due pursuant to 30 Del. C. § 552. The Director further argues that: (i) § 531(a) merely sets forth a time period during which a tax assessment must be issued and that § 531(a) does not establish a deadline by which efforts to collect properly assessed taxes must be commenced, (ii) by statute, the tax at issue here was assessed when the 2000 Tax Return was filed and, as a result, the terms of § 531(a) were satisfied with respect to the timing of any assessment of taxes, and (iii) 30 Del. C. § 553 gives him up to ten (10) years after taxes are properly assessed to commence collection proceedings against a delinquent taxpayer.

As we have determined that the Board does not have jurisdiction over this dispute, we need not resolve the question of whether the Director's claim for payment of allegedly unpaid taxes is timely.

The Board then directed the parties to submit supplemental briefing on the jurisdictional issue. Briefing was completed on May 17, 2010.

Analysis

In general, the Tax Appeal Board is a forum in which a taxpayer can file an administrative appeal challenging the Director's assessment of taxes against the taxpayer. When a taxpayer files an actual return, the applicable statutory scheme provides that such appeals can be filed after: (i) the Director examines either an original or amended return "to determine the correct amount of tax," 30 Del. C. § 521(a), (ii) the Director "finds that the amount of tax shown on the return is less than the correct amount" owed, *id.*; (iii) the Director notifies the taxpayer of the additional tax to be assessed, 30 Del. C. § 521(c); (iv) the taxpayer files a timely protest of the proposed assessment with the Director, 30 Del. C. § 523; (v) the Director reconsiders the assessment and then advises the taxpayer of his determination of the taxpayer's protest, 30 Del. C. § 524; and (vi) the taxpayer files a timely petition with this Board ("an appeal") challenging the assessment/determination made by the Director, 30 Del. C. §§ 525, 544.

In particular, the General Assembly has given this Board the authority to:

. . . hear all appeals from determinations of the Director of all administrative protests including, but not necessarily limited to, determinations under §§ 525, 544 and 561 of this title, and such other statutes granting jurisdiction to the Board as may hereafter enacted, and the Board may affirm, modify or reverse any such determination.

30 Del. C. § 329 (emphasis added) ("Section 329").

We conclude that the dispute before the Board does not involve an appeal from a determination of an administrative protest as provided for in Section 329. The Director has never examined the 2000 Tax Return and, exercising his authority as the taxing authority for the State of Delaware, determined that the amount of tax shown on the return is less than the amount of tax owed and, as a result, assessed additional tax on the taxpayer trust. Rather, the Director

simply examined the return and determined that the return stated the correct amount of tax that was due, that no check was included with the return, and that the trust continued to owe Delaware the amount reflected as due on the 2000 Tax Return with interest and penalty. Petitioner has not identified, and the Board is not aware of, any statute that gives the Petitioner or the trust the right to administratively protest the Director's decision to attempt to collect taxes which are admittedly owed and which allegedly were not paid.

Our conclusion is supported by the fact that the Director did not apply or interpret provisions of state or federal tax codes or regulations - circumstances that would give rise to jurisdiction before this Board, see *Delaware Bankers Ass'n v. Division of Revenue*, 298 A.2d 352 (Del. Ch. 1972) (Board has jurisdiction to decide whether Director's applications of tax code was appropriate) – in order to impose additional taxes on a taxpayer. Instead, he belatedly determined that taxes identified as due on a tax return purportedly had not been paid and that he should attempt to collect these funds from the trust. This act did not involve an assessment of additional tax on the trust after the Director found “that the amount of tax shown on the [2000 Tax Return] is less than the correct amount” owed. 30 Del. C. § 531(a). Nor did it give rise to a determination of an administrative protest, which can be appealed to this Board under the provisions of Section 329.

At bottom, the Director merely seeks to collect tax revenue that both parties admit is due. Petitioner contends that the Director cannot prove that the trust did not already pay the \$1,164.00 in taxes, but this is an issue of proof as to whether or not a tax liability has been paid, an issue as to which this Board has no special expertise or jurisdiction under Section 329.

Petitioner also contends that the trust should be allowed to pursue its case before the Board because the Director's tax conferee previously advised Petitioner that she could appeal his

determination to the Board. While we sympathize with this argument, and the situation Petitioner is facing, nothing a taxpayer, the Director or the tax conferee believes or does can vest this Board with jurisdiction over a matter outside the scope of Section 329.²

Conclusion

For the reasons stated, we conclude that the Board lacks jurisdiction over this dispute and hereby dismiss the petition.

SO ORDERED:









Date: August 11, 2010

² This is particularly true here, where neither the Petitioner nor the trust will suffer legally cognizable prejudice as a result of our ruling. If the Director continues to seek payment of the allegedly unpaid taxes, he will have to take the appropriate steps before a court in Delaware in order to collect. The trust will be able to present all of its defenses, including its defense that the matter is time barred and related defenses such as estoppel, waiver or laches, in that proceeding.