

TAX APPEAL BOARD FOR THE STATE OF DELAWARE

DANNY G. PEREZ, and)
LISSETTE R. PEREZ,)
)
Petitioners,)
)
v.) Dkt. No. 1483
)
DIRECTOR OF REVENUE)
)
Respondent.)

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

Danny G. Perez and Lissette R. Perez, Pro Se

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

DECISION AND ORDER

By Decision and Order, dated September 14, 2011, this Board found that petitioners Danny G. Perez and Lissette R. Perez (“Petitioners”) failed to prove that respondent Director of Revenue (“Respondent”) erred when he imposed certain taxes, interest and penalties on Petitioners. The Decision and Order directed the parties to attempt to agree on an order that would detail the total tax, penalty and interest that Petitioners owe as of the date of the Decision and Order, as well as a per diem interest and penalty calculation for each additional day the amounts due pursuant to the order remain unpaid. The Decision and Order further stated that, if the parties were unable to agree on an order, they should each submit a separate proposed order.

The parties were unable to agree on a form of order, and on or about October 13, 2011, each submitted a proposed order for consideration by the Board. The proposed order submitted by Respondent comports with the Board’s directive and identifies the tax, interest and penalties due as of the date of the Decision and Order, and identifies a per diem interest and penalty

calculation. The proposed order submitted by Petitioners does not do any of the foregoing. In addition, Petitioners' proposed order requests that "the proposed amounts for additional interest and penalties be computed with respect to the Delaware Voluntary Tax Compliance Initiative" ("VTCI"), which Petitioners' proposed order describes as "a one time, limited offer by the State of Delaware to forgive penalties and interest for eligible taxpayers." Petitioner's proposed order further states that Petitioners "qualified for the VTCI program . . . by submitting an amended tax return for 2004 before the filing deadline of October 30, 2009" and that "Petitioners' VTCI application for the [sic] 2004 had been suspended and no further consideration given pending the outcome" of this action.

We have considered the competing orders and have decided to enter the order proposed by Respondent. It comports with the directives in the Decision and Order. The Petitioners' does not. Petitioners' proposed order also makes an argument concerning the VTCI that impacts their liability for penalty and interest that was not raised previously in the proceedings before this Board. To the extent Petitioners had an argument that the VTCI program reduces the penalty or interest they owe, it should have been raised before the submission of their order.

Moreover, in order to participate in the VTCI program, Petitioners had to do one of the following between September 1, 2009, and October 30, 2009:

- (1) Voluntarily file a tax return and pay the taxes reported as due on the return (or agree to a payment plan acceptable to the Respondent which resulted in the taxes reported as due being paid by June 30, 2010), or
- (2) Pay taxes previously assessed as due pursuant to a prior filed return (or agree to a payment plan acceptable to the Respondent which resulted in the taxes previously assessed as due being paid by June 30, 2010).

30 *Del. C.* § 546(b) and (c). Petitioners presented no evidence at any point in these lengthy proceedings indicating that between September 1, 2009 and October 30, 2009, they voluntarily

filed a tax return for the 2004 tax year, and paid the taxes reported as due on such return or entered into a payment plan to pay the taxes reported as due on such return before June 30, 2010.¹ Likewise, Petitioners presented no evidence that between September 1, 2009 and October 30, 2009, they paid taxes which previously had been assessed as final as to them or entered into a payment plan to pay taxes previously assessed as final as to them before June 30, 2010. As a result, Petitioners failed to prove that they satisfied the conditions necessary to participate in the VTCI program, and as a result, Petitioners are not entitled to any reduction in the penalty or interest under the VTCI program. *See 30 Del. C. § 546(e)* (“If any eligible tax, or any part thereof, is not paid during the term of the Initiative . . . penalty and interest equal to the amount of delinquent penalty and interest imposed by the applicable sections of Title 30 for nonpayment of the tax shall be added thereto and deemed payable without protest.”)

SO ORDERED this 14th day of December, 2011.

James M. Winter

Paul C. Silf

Arthur R. Pincus

¹ The only evidence Petitioners introduced regarding the filing of their 2004 tax returns is that on April 14, 2008, they filed “amended” Delaware tax returns for 2004. Petitioners’ April 14, 2008 filing does not fall within the September 1, 2009 to October 30, 2009 window established by the VTCI, and on April 14, 2008, Respondent already had assessed taxes, penalty and interest against Petitioners.

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

DANNY G. PEREZ AND)	
LISSETTE R. PEREZ,)	
)	
Petitioners.)	
)	
v.)	Docket No. 1483
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

FINAL ORDER

NOW, this 15th day of December, 2011 it is hereby ORDERED that the Petitioners are liable with respect to their 2004 taxable year for Delaware Personal Income Tax, penalty for failure to file their return under 30 *Del.C.* §534(a) and interest under 30 *Del.C.* §533, computed through October of 2011, in the following amounts:

Delaware Personal Income Tax	\$10,528.00
Penalty under 30 <i>Del.C.</i> §534(a)	\$ 9,514.00
Interest through October of 2011 under 30 <i>Del.C.</i> §533	\$ 7,633.86
Total	\$27,675.86

It is FURTHER ORDERED that after October 31, 2011, additional interest will continue to accrue under 30 *Del.C.* §533 in the amount of \$52.64 per month or portion thereof during which the full amount of tax set forth above remains unpaid and that

interest will begin to compound monthly in accordance with 30 *Del.C.* §533 for months in which or after which the assessment becomes final.

Joan M. Winters

Paul C. Silva

interest will begin to compound monthly in accordance with 30 Del.C. §533 for months
in which or after which the assessment becomes final.


