

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

JACK WHITAKER)	
)	
Petitioner,)	
)	
v.)	Docket No. 1485
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

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

Jack Whitaker, pro se

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

Petitioner Jack Whitaker (“Petitioner”) contends that the Director of Revenue (“Director”) has (i) improperly denied Petitioner’s request for a refund of personal income taxes, and (ii) improperly denied Petitioner’s request for an abatement of income tax, penalty and interest that the Director seeks to impose on Petitioner for the tax years 2007 and 2008. The Director has moved to dismiss Petitioner’s petition on the ground that Petitioner failed to file his appeal in a timely manner and, as a result, this Board lacks jurisdiction over this dispute. For the reasons set forth below, the Director’s motion is granted and the petition is dismissed.

BACKGROUND

On November 13, 2009, following Petitioner’s protest, the Director sent Petitioner a Notice of Determination pursuant to 30 Del. C. § 524 (“Determination Letter”). (Petition ¶¶ 2; Ex. A). The Determination Letter rejected Petitioner’s protest of the Director’s decision to deny Petitioner’s request for a refund of personal income taxes and Petitioner’s request for an

abatement of income tax, penalty and interest that the Director had assessed against Petitioner for the tax years 2007 and 2008. The Director reached these conclusions after determining that Petitioner was domiciled in Delaware in 2007 and 2008.

Petitioner had 60 days - until January 12, 2010 – to appeal the Director’s determination to this Board. See 30 Del. C. § 525 (“The determination of the Director . . . on the taxpayer’s protest shall be final . . . upon the expiration of 60 days . . . unless within such period the taxpayer seeks review of the Director’s determination pursuant to § 544 of this title”); and 30 Del. C. § 544 (“A determination by the Director on a taxpayer’s protest . . . shall be subject to review by the taxpayer’s filing a petition with the Tax Appeal Board . . . within the time limits specified in § 525”). The failure to file a timely appeal would render the Respondent’s determination a “final assessment of any amount determined by the Director to be due . . .,” 30 Del. C. § 525, and would preclude this Board from considering the merits of the matter because this Board only has jurisdiction to consider properly perfected appeals.

Petitioner believes that the Director incorrectly concluded that Petitioner was domiciled in Delaware in 2007 and 2008. Petitioner prepared a petition appealing the Director’s Determination Letter. On January 9, 2010, before the expiration of the 60 day time period for perfecting an appeal, Petitioner mailed his petition to “Delaware State Office Building, 820 North French Street, Wilmington, DE 19801.” When the envelope containing the petition was delivered to the office building, it was stamped “Insufficient Address” and returned to Petitioner. On January 15, 2010, after having received the returned envelope marked “Insufficient Address” and after the expiration of the 60 day time period for perfecting an appeal, Petitioner mailed his petition to “Tax Appeal Board, 820 N. French Street, 8th Floor, Attn: Joanne Gawinski, Wilmington, DE, 19801.”

The Director contends Petitioner failed to properly perfect an appeal because (i) the January 15 mailing falls outside the 60 day window established by Sections 525 and 544 and cannot serve as a basis for perfecting a timely appeal and (ii) the January 9 mailing is insufficient because it was not properly addressed and, as a result, was never delivered to or filed with the Tax Appeal Board. Petitioner contends that the January 9 mailing “was . . . sent to the correct address,” that someone at the office building “could have opened the envelope and seen that it was to go to the Tax Appeal Board” and that the delivery of the envelope containing his petition to the office building properly perfected his appeal.

ANALYSIS

It is undisputed that the January 15, 2010 envelope was not mailed within the 60 day window established by Delaware law for perfecting an appeal from a determination by the Director. As a result, it cannot serve as the basis for perfecting an appeal. 30 Del. C. §§ 525 and 544. Hence, the only issue is whether the January 9 envelope was properly addressed. We conclude that it was not.

There is little case law in Delaware regarding what constitutes a properly addressed letter; however, what is available supports our conclusion. For example, in *McGonigle v. George H. Burns, Inc.*, 2001 WL 1079036 (Del. Super.), the issue was whether plaintiff had received proper notice of the denial of his request for unemployment benefits. The letter advising plaintiff of the denial was sent to “3 Vincent Court, Waterford Apts., Bear, DE 19701-0000” even though the plaintiff’s correct address was “3 Vincent Court, Bear, Delaware 19701.” In concluding that the notice had not been properly addressed, the Court stated:

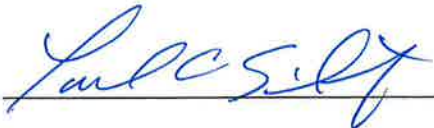
While the addition of four zeros to Claimant’s ZIP code would not substantially create an improperly constructed postal address, the addition of “Waterford Apts” is however, a substantially different address from the Claimant’s correct address.

Typically, an apartment complex has a single street address which is then followed by letters or numbers that identify specific units. An apartment complex can contain hundreds of specifically identified units.

McGonigle, 2001 WL 1079036 at *2 (footnote omitted). See also 30 Del. C. § 551(b) (requiring tax related documents be “properly addressed to the agency, officer or office with which such document is required to be filed . . .” in order for them to be timely mailed).

The “Delaware State Office Building” is a twelve story building which contains offices for private commercial activities, retail stores and offices for numerous departments of the executive, judicial and legislative branches of the state government. Dozens of state agencies maintain their offices in the building and hundreds of individuals are employed in the building. Just as in *McGonigle*, where a notice addressed to a an apartment complex was found to be improperly addressed, Petitioner’s January 9 mailing to the “Delaware State Office Building” was not properly addressed and, as a result, was never delivered to or filed with the Tax Appeal Board.¹ Consequently, Petitioner’s appeal of the Determination Letter was not perfected within the 60 day window mandated by Delaware law, this Board lacks jurisdiction over the matter, and Petitioner’s petition is dismissed.







¹ The Board does not conclude that the envelope had to be expressly addressed to the Tax Appeal Board. Rather, in order for the envelope to be properly addressed, there had to be some information - e.g., Tax Appeal Board, Division of Revenue, Director of Revenue, an individual within the division, etc. - beyond the name of the building on which the mail room personnel could rely to properly route the envelope.

Reginald C. Dudgeon

Date: 10/13, 2010