

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

ANDREA DELOTTE,)	
Petitioner,)	Docket No. 1496
v.)	
)	
DIRECTOR OF REVENUE,)	
Respondent.)	

DECISION AND OPINION

This matter is before the Tax Appeal Board (the “Board”) presently on a Motion to Dismiss (the “Motion”) filed by the Director of the Delaware Division of Revenue (the “Respondent”). For the reasons stated herein, the Board grants the Respondent’s Motion to Dismiss the Petition (the “Petition”), filed by Andrea L. DeLotte (“the Petitioner”).

BACKGROUND

On March 19, 2010, the Tax Conferee of the Delaware Division of Revenue (the “Division”) issued its Notice of Determination (the “Notice of Determination”) with respect to the refund claim that is the subject of the Petition. Subsequently, the Petitioner filed her Petition with the Board on May 18, 2010. Following that, Respondent filed his Motion on November 10, 2010, alleging that the Petitioner’s refund claim was untimely and thus barred by the applicable statute of limitations, as set forth in 30 Del. C. §539. For the reasons stated herein, the Board (i) finds that the Petitioner’s claim for refund was not timely filed pursuant to 30 Del. C. §539 (a), and (ii) grants Respondent’s Motion.

ANALYSIS

Section 537 of title 10 of the Delaware Code defines the Respondent's authority to issue a refund of overpaid taxes. It provides:

- (a) In the case of any overpayment, the Director, *within the applicable period of limitations*, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of any tax imposed by the tax laws of this State on the person who made the overpayment, and the balance shall be refunded by the Director to such person.

30 Del. C. § 537(a) (emphasis added). As the emphasized language makes clear, the discretion set forth in Section 537 is premised on the fact that the claim for refund must be filed within the applicable limitations period, which is set forth in 30 *Del. C.* § 539.

In pertinent part, Section 539 provides:

- (a) *Claim for credit or refund* of an overpayment of any tax imposed by this title or Title 4 shall be filed by the taxpayer within 3 years from the last date prescribed for filing the return (or in the case of license fees or taxes under Part III of this title, 3 years from the expiration date of the license to which such overpayment relates) or within 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. *No credit or refund shall be allowed or made after the expiration of the period of limitation* prescribed in the preceding sentence for the filing of a claim for credit or refund, unless a claim for credit or refund is filed with the Director by the taxpayer within such period.

30 *Del. C.* § 539.

Section 1168 of title 30 provides that individuals, such as the Petitioner, shall file their income tax returns "on or before the thirtieth day of the fourth month following the close of the taxpayer's taxable year." 30 *Del. C.* § 1168.

In the instant appeal, the tax year for which the Petitioner's claim for refund relates ended on December 31, 2005. Pursuant to Section 1168, the date by which

Petitioner had to file her income tax return was May 1, 2006.¹ Based on the statute of limitations for refund claims established pursuant to 30 *Del. C.* § 539, the Petitioner had three (3) years from the return's due date (or until April 30, 2009) to file a refund claim. According to the Respondent's records (which the Petitioner has not refuted), her claim for refund was not received by the Respondent until August 12, 2009, or nearly four (4) months *after* the filing deadline. Accordingly, the Tax Conferee affirmed the Respondent's decision to deny the claim, citing the absolute bar of the statute of limitations, 30 Del. C. § 539(a).

In filing her Petition appealing the Tax Conferee's determination, the Petitioner cited several factors in support of her appeal, including but not limited to: natural disasters, family illnesses, and an ignorance of the applicable limitations period that barred her claim. Though a very troubling situation, the State legislature has not given this Board the statutory power to ignore the clear statutory timeframes in which to file a claim. This Board has no discretionary authority to allow the claim based on such hardship.

¹ Petitioner had the right to seek an extension of time to file her 2005 return after May 1, 2006; however, nothing in the record suggests Petitioner made such a request or filed her returns after May 1, 2006.

As stated above, on the facts available to the Board, the Petitioner's claim for a refund was due no later than May 1, 2009. The Respondent did not receive the Petitioner's claim for refund until August 12, 2009. There is no indication that the Petitioner filed an extension and there is no evidence that the United States Postal Service unduly delayed the timely delivery of the claim. Absent such evidence, the Petitioner's claim was filed too late, and this Board does not have the discretion to alter the clear language of Delaware law.

Thus, this Board concludes that the decision of the Tax Conferee is affirmed, and the Petitioner's claim for refund is denied and her Petition is dismissed.

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

By: 
Todd C. Schiltz

By: 
Steven R. Director

By: 
Joan Winters

By: _____
Cynthia Hughes

By: 
Regina Dudzic

April 13,
DATE: ~~March~~, 2011