

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

TERRENCE A. ODRICK and RENEE')	
D. ODRICK)	
)	
Petitioners,)	
)	
v.)	Docket No. 1571
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

BEFORE: Todd C. Schiltz, Esq., Chairman, Steven R. Director, Esq., Vice Chairman and Joan M. Winters, CPA, Sindy Rodriquez and Robert Slavin, Members

Terrence A. Odrick and Renee' D. Odrick, *pro se*

Jennifer R. Noel, Esq., Deputy Attorney General for Respondent

The taxpayers herein filed an amended 2008 Delaware personal income tax return seeking a refund for overpayment. The Director of Revenue denied the requested refund on the ground that the amended return was filed beyond the period in which amended returns for refund can be filed.

The issue before the Board is whether the taxpayers filed a timely amended 2008 Delaware tax return for refund. For the reasons set forth below, the Board concludes that the taxpayers' amended return was filed too late and that the taxpayers are not entitled to the refund.

BACKGROUND

Terrence and Renee' Odrick ("Taxpayers") filed their original 2008 Delaware personal income tax return on or about February 13, 2009, prior to the April 30, 2009 due date for such returns. Taxpayers did not request an extension of time to file their 2008 Delaware personal

income tax return. Taxpayers made periodic payments on their 2008 tax liability, with the last such payment being made on March 9, 2010.

Pursuant to applicable Delaware statutes, Taxpayers were required to file a claim for refund for 2008 not later than the latest to occur of (a) three years after the due date of the return, or (b) two years after the tax was paid. Specifically, Title 30, Section 539(a) of the Delaware Code provides that a “[c]laim for . . . refund of an overpayment of any tax imposed by this title . . . shall be filed by the taxpayer within 3 years from the last date proscribed for filing the return . . . or within 2 years from the time the tax was paid, whichever of such periods expires the later” 30 *Del. C.* § 539(a).¹ Section 539(a) further provides that “[n]o credit or refund shall be allowed or made after the expiration of the period of limitation” set by Section 539. *Id.*

Here, the later of these dates is April 30, 2012, three years from the due date of the Taxpayers’ 2008 Delaware personal income tax return.

In June of 2012, Taxpayers filed an amended 2008 Delaware personal income tax return. The amended return sought a refund of \$2,795 for overpaid taxes.

In November of 2012, the Director of Revenue denied the Taxpayers’ claim for refund. In January 2013, Taxpayers filed a protest of that denial and on February 19, 2013, the Director of Revenue’s Tax Conferee sent Taxpayers a Notice of Determination pursuant to 30 *Del. C.* § 524 notifying them that their claim for refund was denied as untimely.

ANALYSIS

The statutes set forth above establish a strict limitations period during which claims for refund must be filed. 30 *Del. C.* § 539 (a “claim for refund . . . shall be filed” within the applicable limitations period). Here, that period extended to April 30, 2012. Taxpayers did not

¹ Section 540(c) of Title 30 also provides that “for purposes of . . . § 539 of this title . . . [a]ny return filed before its due date shall be considered as filed on such due date.” 30 *Del. C.* § 540(c).

file their 2008 Delaware amended return for refund until June of 2012, after the passing of the applicable period. The Director of Revenue has no authority to grant a claim for refund that is submitted after the passing of the limitations period. 30 Del. C. § 539(a) (“No credit or refund shall be allowed or made after the expiration of the period of limitation.”) See also 30 Del. C. § 537 (“In the case of an overpayment, the Director, *within the applicable period of limitations*, may credit the amount of such overpayment . . . against any liability . . . imposed by the tax laws of this State . . . and the balance shall be refunded by the Director to such person.”) (emphasis added).

While we sympathize with Taxpayers, they filed their amended 2008 Delaware return for refund after the expiration of the limitations period and they have offered no analysis or explanation as to why the limitations period does not bar their claim. The Director of Revenue correctly determined Taxpayers were not entitled to a refund. The decision of the Director of Revenue is affirmed.

Paul C. Selig

Robert W. Slan

Jan M. Winters

Richard M. [Signature]
vice-chair

Dandy M. [Signature]

Date: March 12, 2014