

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

DAVID L. McGOWAN and SUSAN	)	
K. McGOWAN,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 1600
	)	
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

David L. McGowan, *pro se*, for Petitioners.

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

**DECISION AND ORDER**

This matter comes before the Board on Respondent’s motion to dismiss for lack of subject matter jurisdiction. The issue is whether the Board lacks jurisdiction over this matter as a result of the Petitioners’ alleged failure to timely protest the notice of partial disallowance of a refund. For the reasons set forth below, the Board concludes that Petitioners did not file a timely protest to the notice of partial disallowance and, as a result, the disallowance became final, this Board lacks subject matter jurisdiction over this dispute, and this matter must be dismissed.

**Facts**

Petitioners are residents of Maryland who filed a Delaware personal income tax return for calendar year 2012. Petitioners’ return sought a refund of \$8,369 for alleged overpayment of taxes. On July 3, 2013, the Respondent sent Petitioners a notice pursuant to 30 *Del. C.* § 542 advising them that their request for a refund was granted in part and denied in part (“Notice of

Disallowance”). On October 29, 2013, Petitioners filed a written protest with the Respondent objecting to the Notice of Disallowance to the extent that it did not grant the refund in total. On January 13, 2014, the Respondent sent the Petitioners a Notice of Determination pursuant to 30 *Del. C.* § 524 stating that Petitioners’ protest was denied because they failed to file a timely protest from the Notice of Disallowance. Thereafter, Petitioners timely appealed the Notice of Determination pursuant to 30 *Del. C.* § 544.

On March 12, 2014, the Board and the parties participated in a pretrial conference. During the conference, Respondent stated that he intended to file a motion to dismiss for lack of subject matter jurisdiction and the Board and parties agreed on a schedule on which the motion would be presented to the Board. Respondent filed his opening brief in support of the motion in accordance with the agreed-upon schedule. The time by which Petitioners were supposed to file their answering brief is long past due and Petitioners have not filed any response to the motion, notwithstanding a subsequent letter reminding them of their failure to file a response.

### **Pertinent Statutory Provisions**

The process the Respondent and taxpayers must follow with respect to reviewing requests for refunds and protesting any disallowance of a refund is set forth in Chapter 5 of title 30 of the Delaware Code. 30 *Del. C.* § 501 et seq. Specifically, Section 542 of title 30 provides: “If the Director disallows a claim for . . . refund, in whole or in part, the Director shall mail written notice of the disallowance to the taxpayer, and such notice shall set forth the reason for the disallowance.” 30 *Del. C.* § 542. Section 542 further provides that “The action of the Director in disallowing all or any part of a claim for . . . refund shall become final upon the expiration of 60 days . . . from the date on which the Director mailed the notice of disallowance to the

taxpayer, unless within such period the taxpayer protests the Director's disallowance pursuant to the provisions of § 523 of this title.” *Id.*

In pertinent part, Section 523 of title 30 provides that “[w]ithin 60 days . . . after the date of the mailing . . . of a notice of the disallowance of a claim for . . . refund under § 542 of this title, the taxpayer may file with the Director a written protest against the . . . disallowance in which the taxpayer shall set forth the grounds upon which the protest is based.” 30 *Del. C.* § 523.

### **Analysis**

On July 3, 2013, the Respondent sent Petitioners a Notice of Disallowance pursuant to 30 *Del. C.* § 542 advising them that their request for a refund was granted in part and denied in part. Under Section 542 of title 30, Petitioners had 60 days, until September 1, 2013, to protest the Notice of Disallowance pursuant to Section 523. Petitioners did not file their protest until October 29, 2013, more than 60 days after the Notice of Disallowance was issued. As a result, the partial disallowance of the requested refund became final pursuant to 30 *Del. C.* § 542, and this Board lacks jurisdiction to hear the Petitioners’ appeal. *Simpson v. Director of Revenue*, Docket No. 1444 at p. 5 (Del. Tax Appeal Board Oct. 31, 2007).

**Conclusion**

For the foregoing reasons, the Board holds that the Petitioners failed to protest the Notice of Disallowance in a timely manner, the partial disallowance of Petitioner's request for refund became final, and the Board lacks jurisdiction over this appeal. This matter is hereby dismissed.

Carl C. Silva

Arthur R. Brewster

Robert W. Slan

Andy Williams

Jan M. Winter

Date: August 13, 2014