

On February 10, 2014, Petitioner filed a petition before this Board. The petition sought a re-determination of the deficiency identified in the Assessment and alleged that the Assessment contained “inaccurate estimates of [Petitioner’s] income and taxes for those years.”

Contemporaneous with the filing of the petition and thereafter, Petitioner submitted Delaware tax returns for tax years 2009 to 2011. Respondent processed those returns and determined that Petitioner had no tax liability to Delaware for 2009 to 2011.

While this result seemingly resolved the parties’ dispute and the Respondent provided the Petitioner with a draft Stipulation of Dismissal dismissing this matter, Petitioner refused to sign the stipulation due to, among other things, a dispute over amounts allegedly due to Petitioner in other tax years.

Specifically, Petitioner contends that he is due a refund from Delaware for other tax years. These tax years were not identified in the Assessment, although like the years that were addressed by the Assessment, the Petitioner did not timely file Delaware tax returns for those tax years. When addressing the Assessment and the 2009 to 2011 tax years to which it pertained, the parties also dealt with issues related to the other tax years. Petitioner ultimately provided Respondent with information related to the other tax years. Relying on this information, Respondent determined Petitioner was due a refund for these periods.

While approximately \$7,256 of the refund due for the other tax years was returned to Petitioner, Respondent sent approximately \$735 of the refund due to Petitioner for these tax years to the Internal Revenue Service (“IRS”). This payment was made in accordance with a demand issued by the IRS. The demand indicated Petitioner had not paid his federal taxes and directed the Respondent to deliver any amounts owed to Petitioner to the IRS to cover those past due federal taxes. Petitioner contends the IRS erred when calculating his federal tax liability, he does not owe the IRS the \$735, the Respondent should have refunded the \$735 to him and the Respondent should not have sent the funds to the IRS. Earlier in these proceedings, Petitioner refused to dismiss this matter until the dispute over the approximately \$735 was resolved.

The Motion

Respondent has moved to dismiss the case arguing (i) the Assessment that is the subject of the petition before the Board pertains to tax years 2009 to 2011, and not to the other tax years, (ii) the dispute as to the 2009 to 2011 tax years has been resolved in Petitioner’s favor, and (iii) as a result, there is no case or controversy before the Board.

The Board granted Petitioner several extensions of time to respond to the motion. On April 3, 2017, Petitioner responded by asking the Board to “[p]lease close out this case.” Petitioner then had a quick change of heart because nine days later he submitted a twenty-six page, single spaced document titled

Amended/Replacement Answer to Respondent's Motion to Dismiss (the "Answer") which opposed the motion.

The Answer does not address the fundamental issues presented by the motion. Instead, the Answer raised an array of issues, including concerns about the facial constitutionality of Section 521(b) and Respondent's compliance with the Constitution of the United States of America and alleged abuse of power under Section 521(b). The Answer concedes that Petitioner was a Delaware resident from 2009 to 2011 and recognizes Petitioner had an obligation to file tax returns, but contends that Respondent had no basis for issuing the Assessment and acted unreasonably by estimating Petitioner's taxable income without sufficient data. The Answer further contends that the Petitioner has been unduly imposed upon by having to respond to the Assessment, file the petition, file tax returns, address these proceedings and deal with the other tax years. The Answer asks the Board to order the Respondent to pay fees, expenses and damages that Petitioner allegedly incurred as a result of having to respond to the Assessment and address these proceedings.

Analysis

After considering the parties' positions, we conclude that there is no present case or controversy between the parties as to which this Board has jurisdiction and that Petitioner has not stated a claim as to any issue over which the Board does have jurisdiction. As a result, this case is dismissed.

The Board is an administrative body that has limited jurisdiction. *See* 30 Del. C. § 329 (“The Tax Appeal Board shall hear all appeals from determinations of the Director . . .”). For purposes of this case, its role was to hear Petitioner’s appeal of the Assessment and determine whether or not the Assessment should be upheld. Before the Board could take that step, circumstances changed.

Contemporaneous with and following the filing of this appeal, Petitioner filed tax returns and/or provided the Respondent with additional information regarding his 2009 to 2011 taxable income. This additional information caused the Respondent to re-determine the deficiencies alleged, abandon the Assessment and grant Petitioner the relief he seeks before the Board. As Petitioner has received the relief he requested in his petition, his claim is moot and there is no case or controversy as to Petitioner’s 2009 to 2011 Delaware taxes for this Board to resolve. *See In re Peierls Charitable Lead Unitrust*, 777 A.3d 232, 235 (Del. 2013) (“It constitutes reversible error for a trial court to have ‘addressed issues as to which there was no actual controversy.’”) (citations omitted); *Agar v. Judy*, 2015 WL 6949292, at *1 (Del. Ch. Nov. 15, 2015) (Order) (dismissing claims for “fail[ure] to state a claim because of the absence of an actual controversy” between the parties); *Franklin Balance Sheet Inv. Fund v. Crowley*, 2006 WL 3095952, at *8 (Del. Ch. Oct. 19, 2006) (“The primary function of a court is to adjudicate actual controversies. In the absence of a controversy, a case will be dismissed”).

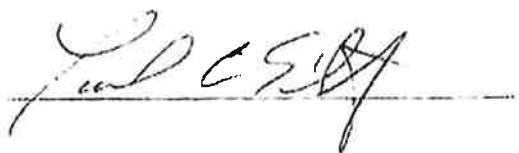
The fact the parties remain in dispute over the approximately \$735 related to the other tax years that Respondent sent to the IRS does not change this result. This Board has limited jurisdiction. In this case, it can only resolve disputes pertaining to the 2009 to 2011 tax years addressed by the Assessment, *i.e.*, the issues resolved below by the Respondent and challenged by the Petitioner on appeal. The \$735 relates to tax years and acts that were not the subject of the Assessment or Petitioner's appeal therefrom.

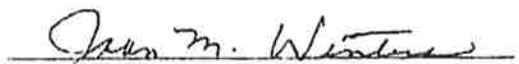
Likewise, Petitioner's contentions of facial and as applied constitutional violations set forth in the Answer raise issues outside the scope of this Board's jurisdiction. To the extent Petitioner raises such claims or seeks damages therefor, such claims and requests for relief are outside the jurisdiction of the Board. *JLI Invest, S.A. v. Gregor*, Tax Appeal Board, Dkt. 1652 (Jan. 18, 2017) at 24-29 (describing the scope of the Board's jurisdiction, including that the Board lacks jurisdiction over facial and as applied constitutional challenges).

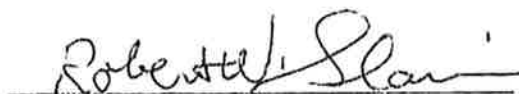
Finally, although Petitioner now contends that Respondent abused his power under Section 521(b) when estimating Petitioner's 2009 to 2011 tax obligations, Petitioner has not clearly set forth the legal theory underlying his abuse of power contention. It is not clear if the Petitioner is asserting a facial or as applied constitutional challenge or something else. Given the Petitioner's lack of precision, it is not clear if the Board has jurisdiction over this issue. *See JLI Invest, S.A. v. Gregor*, Tax Appeal Board, Dkt. 1652 (Jan. 18, 2017) at 24-29.

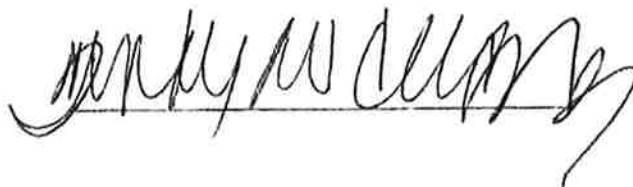
Assuming Petitioner's contention is that the Respondent did not comply with Section 521(b), an issue over which this Board does have jurisdiction, we note that (a) Petitioner is the party that failed to file timely tax returns, (b) this failure triggered Respondent's statutory obligation to estimate Petitioner's taxes, 30 *Del. C. § 521(b)* ("If the taxpayer fails to file any return of tax required to be filed, **the Director shall estimate** from any available information the taxpayer's taxable income, and the tax thereon . . .") (emphasis added), and (c) the Respondent has very broad discretion to rely on "any available information" when estimating taxes under Section 521(b), *id.*. Under these circumstances, Petitioner is ill-positioned to criticize the Respondent for fulfilling his statutory mandate to estimate taxes or for relying on the 2008 Form 1099 when doing so. Petitioner has no claim that Respondent failed to adhere to Section 521(b) or acted outside the scope of the authority given him when estimating Petitioner's 2009 to 2011 taxes.

For the forgoing reasons, this matter is dismissed.









Date: June 21, 2017