

TAX APPEAL BOARD OF THE STATE OF DELAWARE

REDMOND DAVIS and PATRICIA DAVIS,)	
)	
Petitioners,)	
)	
v.)	Docket No. 1639
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

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

Redmond Davis and Patricia Davis, *pro se*

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

DECISION AND ORDER

Petitioners Redmond Davis and Patricia Davis challenge a personal income tax advisory notice (the “Notice”) dated April 30, 2014. The Notice reflected increased tax liability for 2010 arising from the disallowance of deductions claimed by petitioners on their personal income tax return. The Director of Revenue has moved to dismiss the petition arguing that this Board lacks subject matter jurisdiction over this matter because the petitioners failed to file their petition in a timely manner.

For the reasons set forth below, the Director of Revenue’s motion to dismiss is granted.

ANALYSIS

The Notice was dated April 30, 2014. Petitioners filed a timely protest to the Notice. On July 3, 2014, the Director of Revenue’s tax conferee issued a notice of determination denying the protest. Title 30, Section 525 of the Delaware Code gives a taxpayer sixty days to file a petition with this Board challenging a notice of determination. 30 *Del. C.* § 525. If a petition

challenging a notice of determination is not filed with this Board within sixty days, the notice of determination becomes final. *Id.* The petitioners filed their petition on February 27, 2015, more than sixty days after July 3, 2014. As the petition was not timely filed, this Board lacks subject matter jurisdiction over this appeal and it must be dismissed. *Dye v. Director of Revenue*, Docket No. 1261 at pg 1 (Mar. 7, 1997).

Petitioners contend that they called the Tax Appeal Board, speaking to the Director of Revenue's assistant, prior to the expiration of the sixty day period established by Section 525 and that their telephone call was sufficient to trigger their appeal to this Board. Petitioners state that they called the Tax Appeal Board because the notice of determination issued by the tax conferee advised them they could perfect their appeal in this manner. In pertinent part, the notice of determination states:

If you do not agree with this determination, Section 544 of Title 30 of the Delaware Code provides that you may seek review of the determination by *filing a Petition* with the Tax Appeal Board within sixty (60) days of the date of this notice with the Tax Appeal Board. If your Petition is not received by the Tax Appeal Board, and in the required form, within 60 days of the date of this notice, Section 525 of Title 30 of the Delaware Code provides that this proposed assessment will constitute a final assessment, and you will have no further rights to review of the proposed assessment.

If you choose to *file a Petition*, you may contact the Secretary of the Tax Appeal Board by phone at (302) 577-8981 or in writing at the following address:

Tax Appeal Board
Carvel State Office Building, 8th Floor
820 N. French Street
Wilmington, DE 19801

The Secretary of the Board can provide you with the information about the Board's procedures and its *forms for Petitions*.

(emphasis added). The petitioners contend that, because the notice of determination instructed them to "contact the Secretary of the Tax Appeal Board by phone . . . or in writing" they could perfect their appeal by calling the Secretary to the Board.

We disagree. The notice of determination is consistent with Delaware law,¹ and makes clear that if the petitioners did not agree with the tax conferee's determination the petitioners could "fil[e] a Petition with the Tax Appeal Board . . . in the required form" The notice of determination further states that, if the petitioners "choose to file a Petition," they can "contact the Secretary of the Tax Appeal Board by phone . . . or in writing" The fact the notice of determination advised the petitioners of alternative methods for contacting the Board's secretary did not modify the clear language stating that the petitioners "may seek review of the determination by filing a Petition with the Tax Appeal Board" A telephone call is not a "Petition" and a call will not perfect an appeal before the Board.

As the petitioners did not timely perfect their appeal, the motion to dismiss is GRANTED and this matter is dismissed.

Paul C. Siff

Robert W. Flan

John R. [Signature], Vice-Chair

John M. Winters

Date: May 11, 2016

¹ Title 30, Section 544 of the Delaware Code provides that "[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, in such form as the Tax Appeal Board may prescribe . . .*" 30 Del. C. § 544 (emphasis added).