

TAX APPEAL BOARD OF THE STATE OF DELAWARE

GEORGE & KATHY SMALLWOOD,)
)
 Petitioners,)
)
 v.) Docket No. 1655
)
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

 John D. Travis, for George & Kathy Smallwood

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

DECISION AND ORDER

Petitioners George and Kathy Smallwood challenge three personal income tax advisory notices (the “Notices”) dated May 12, 2014. The Notices reflected increased tax liability for 2010, 2011 and 2012 arising from the disallowance of alleged business expenses claimed by petitioners on their personal income tax returns. The Director of Revenue has moved to dismiss the petition arguing that this Board lacks subject matter jurisdiction over this matter because (i) the petitioners’ protest to the Notices was untimely, and (ii) 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.¹

¹ The parties agreed to a briefing schedule on the motion to dismiss, but the Petitioners never submitted a brief in opposition to the motion. As a result, the Board could move to dismiss this matter for lack of prosecution. The Board has elected not to take this step and will address the merits of the motion.

ANALYSIS

The Notices were dated May 12, 2014. Title 30, Section 523 of the Delaware Code gives a taxpayer sixty days to file a written protest challenging a notice of proposed assessment. 30 *Del. C.* § 523. Title 30, Section 522 provides that a notice of proposed assessment becomes final if a protest is not filed within the sixty day period established by Section 523. 30 *Del. C.* § 522. The petitioners did not file their protest to the Notices until May 18, 2015, more than a year after the Notices were issued. As the petitioners' protest was not timely under Section 522 and 523 of Title 30, this Board lacks jurisdiction to review the matter. *Simpson v. Director of Revenue*, Docket No. 1444 at pg. 5 (Oct. 31, 2007) (board lacks jurisdiction over assessments that have become final as a result of taxpayer's failure to file a timely protest).

After receiving the petitioners' untimely protest, the Director of Revenue's tax conferee issued a Notice of Determination dated June 9, 2015. The tax conferee denied the protest on the grounds that the protest was untimely under Sections 522 and 523 of the Title 30. 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 did not file their petition with this Board until September 1, 2015,

more than sixty days after June 9, 2015. 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).

The motion to dismiss is GRANTED.

Paul C. Self

Robert W. Sloan

John R. [Signature], vice-chair

John M. Winters

Date: May 11, 2016