

TAX APPEAL BOARD OF THE STATE OF DELAWARE

MICHAEL PORTER,)
)
 Petitioner,)
)
 v.) Docket No. 1689
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

BEFORE: Todd C. Schiltz, Esq., Chairman, Steven R. Director, Vice-Chairman,
and Robert Slavin, Member

Michael Porter, *pro se*, for Petitioner

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

DECISION AND ORDER

Petitioner Michael Porter has appealed the Notice of Determination denying his claim for a refund for tax years 2007, 2008 and 2010 on the ground that the claim is barred by the applicable statute of limitations. For the reasons set forth below, the Board agrees that petitioner’s claim is time barred and this matter is dismissed.

FACTS AND PROCEDURAL HISTORY

In August 2016, petitioner filed tax returns for tax years 2007, 2008 and 2010. These returns reflected that petitioner paid more taxes than he owed during those years. Contemporaneous with the filing of these returns, petitioner filed a

claim seeking a refund for the taxes he overpaid in those years (and asking that the refund be applied to a tax liability arising under petitioner's 2004 tax return, a return that was also filed in August 2016). On September 13 and 15, 2016, the Division of Revenue issued Notices of Disallowance denying petitioner's refund claim as untimely. Petitioner protested the Notices of Disallowance, and thereafter respondent's Tax Conferee sent petitioner a Notice of Determination informing the petitioner that his protest had been denied because his refund claim was barred by the applicable statute of limitations.

Petitioner appealed that determination to the Board. Respondent has moved to dismiss petitioner's petition on the ground his request for a refund is time barred. This is the Board's decision on the motion to dismiss.

ANALYSIS

The applicable statute of limitations relating to requests for refunds is set forth in 30 *Del. C.* § 539. In pertinent part, Section 539 states: a “[c]laim for . . . refund . . . of any tax . . . shall be filed by the taxpayer within 3 years from the last date prescribed for filing the return . . . or within 2 years from the time the tax was paid, whichever of such periods expires the later No . . . refund shall be allowed . . . after the expiration of the period of limitations prescribed in the preceding sentence . . . unless a claim for . . . refund is filed . . . within such period.”

With regard to when a tax is paid for purposes of Section 539, 30 *Del. C.* § 540(c)(2) states that “for purposes of . . . § 539 of this title: . . . (2) Any tax paid by the taxpayer before its due date shall be considered paid on such due date.” For tax years 2007, 2008 and 2010, the respective due dates for payment of taxes was April 30, 2008, April 30, 2009 and May 2, 2011.

Here, three years from the date the return was due is later than two years after the tax was paid. Consequently, pursuant to the terms of Section 539, petitioner’s claim for refund for the taxes years at issue had to be filed on or before the following dates:

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|---------------|----------------------------------|
| Tax Year 2007 | on or before April 30, 2011; |
| Tax Year 2008 | on or before April 30, 2012; and |
| Tax Year 2010 | on or before May 2, 2014. |

Petitioner did not file his claim for refund until August 2016. This filing occurred after the expiration of the applicable statute of limitations. As a result, “[n]o . . . refund shall be allowed” 30 *Del. C.* § 539.

Petitioner argues that 30 *Del. C.* § 531(e) and (f) extend the applicable period of limitations and render his claim for refund timely. The Board disagrees. Section 531(e) addresses the time period during which the respondent may issue a notice of assessment for additional tax due if a taxpayer changes his, her or its federal return and thereby increases the taxpayer’s federal tax liability. Section

531(e) has no application here. Section 531(f) allows the respondent and a taxpayer to extend the time period established by Section 531(e). Section 531(f) has no application here.

For the foregoing reasons, the respondent's motion to dismiss is granted and this matter is dismissed.

Jul C Selt
Robert W Slavin

H.R. [Signature]

SO ORDERED this 27th day of October, 2017.