

TAX APPEAL BOARD OF THE STATE OF DELAWARE

JOANNA K. ADAMS,)	
Petitioner,)	
)	
v.)	Docket No. 1699
)	
DIRECTOR OF REVENUE)	
Respondent.)	

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

Joanna K. Adams, *pro se*, for Petitioner

Edward M. Black, Esq., Deputy Attorney General, for Respondent

DECISION AND ORDER

The issue before the Board is whether the petitioner (the "Taxpayer") filed a timely appeal from the notice of determination issued by the Director of Revenue (the "Director"). The Board concludes the Taxpayer did not file a timely appeal and, as a result, the assessment set forth in the notice of determination became final and the Director is entitled to judgment on the pleadings.

The facts pertinent to this case are few and undisputed. On January 6, 2017, the Director sent the Taxpayer a notice of proposed assessment related to the underpayment of estimated tax in 2015 and the disallowance of certain itemized deductions for the same year. *See 30 Del. C. § 521(c)*. The notice proposed the

assessment of additional tax, interest and penalty. On January 28, 2017, the Taxpayer filed a protest with the Director in accordance with 30 *Del. C.* § 523, contending that, although she is a resident of Delaware, all of her income was earned in Maryland and, therefore, she has no Delaware-sourced income that Delaware can tax.¹

On April 7, 2017, the Director issued a notice of determination pursuant to 30 *Del. C.* § 524. The notice of determination denied the Taxpayer's protest in full. In pertinent part, Title 30, Section 525 of the Delaware Code states:

The determination of the Director under § 524 of this title on the taxpayer's protest shall be final (and such determination shall constitute a final assessment of any amount determined by the Director to be due) upon the expiration of 60 days ... from the date when the Director mails notice of the determination to the taxpayer, unless within such period the taxpayer seeks review of the Director's determination pursuant to § 544 of this title.

Section 544 of Title 30 states:

A determination by the Director on a taxpayer's protest pursuant to § 523 of this title 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, within the time limits specified in § 525 or § 543 of this title, as the case may be.

¹ *But see Dedrick v. Director of Revenue*, Dkt. 1664, (DE Tax Appeal Board Feb. 8, 2017) opinion at 6-7 (“States typically tax all of a resident’s income regardless of its source” but often “grant tax credits to their residents to offset taxes paid to other states.”) (citation omitted). Here, the Director gave the Taxpayer a credit for taxes paid to Maryland.

Under these statutory provisions, if a taxpayer does not file a petition with the Board within sixty days following the mailing of the notice of determination, then such determination becomes "final" and "shall constitute a final assessment of any amount determined by the Director to be due." 30 Del. C. § 525.

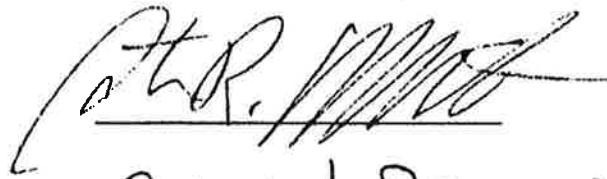
Here, the Taxpayer did not file her petition with the Board until July 3, 2017.² July 3 is more than sixty days after April 7, 2017, the date the Director mailed the notice of determination to the Taxpayer. As the Taxpayer's appeal was untimely, the April 7, 2017 notice of determination became "final" and "constitute[s] a final assessment of any amount determined by the Director to be due." 30 Del. C. § 525.

For the foregoing reasons, the Board grants the Director's motion for judgment on the pleadings.











SO ORDERED this 20th day of September, 2018.

² The proposed assessment and the notice of determination were directed to Peter B. and Joanna K. Adams, but the petition appears to have been filed solely on behalf of Joanna K. Adams. To the extent the petition was filed on behalf of Peter Adams, the Board reaches the same conclusion.