

TAX APPEAL BOARD OF THE STATE OF DELAWARE

EDWARD J. CLINEFF,)
)
 Petitioner,)
)
 v.) Docket No. 1731
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

BEFORE: Todd C. Schiltz, Esq., Steven R. Director, Esq., Joan M. Winters,
CPA, Robert Slavin and M. Lynn Fuller

Edward J. Clineff, *pro se*, for Petitioner

Elizabeth R. McFarlan, Esq. Deputy Attorney General, for
Respondent

DECISION AND ORDER

1. The issue in this case is whether petitioner Edward J. Clineff is required to pay a \$75 business license fee for 2016 and related penalty and interest. Based on the facts presented to the Board, the Board determines that: (i) Mr. Clineff did not pay the \$75 license fee; (ii) he must pay the fee; and (ii) the Director of Revenue’s assessment of \$75 in unpaid business license fees plus penalty and interest against Mr. Clineff is upheld.

2. Mr. Clineff operates Clineff's Clean Outs and has a business license as a drayperson/mover. Clineff Ex. 1.¹ Mr. Clineff renewed his license for 2015 and paid the \$75 license fee related thereto. Mr. Clineff did business in the State of Delaware in 2015. In late 2015, a prospective client advised Mr. Clineff that, while it was interested in using his services, it had elected not to engage Mr. Clineff as he lacked a business license.

3. Mr. Clineff contacted the State of Delaware to confirm that he was properly licensed and was advised that he had properly paid the 2015 licensee fee and had a 2015 license. Mr. Clineff further testified that the State told him that his license was not showing up on the State's computer system such that if someone, like Mr. Clineff's prospective customer, attempted to confirm he was licensed, no license would be listed. The State then sent Mr. Clineff a license for 2015.

4. In late 2015, Mr. Clineff applied for a 2016 business license from the State. Mr. Clineff did business in the State of Delaware in 2016. He did not pay the \$75 fee for the 2016 license. Mr. Clineff testified that he "pestered" representatives of the State about the 2016 fee and his loss of business in 2015 and that they agreed to apply the \$75 fee Mr. Clineff paid for his 2015 license to cover the license fee he owed for 2016.

¹ The facts set forth herein are derived from the testimony given at the January 9, 2019 factual hearing in this matter. Exhibits cited herein refer to documents Mr. Clineff and the Director of Revenue introduced at the factual hearing.

5. Mr. Clineff contends that he did not receive the benefit of his 2015 license because the State did not identify him as a licensed mover on its website and, as a result, the \$75 he paid for his 2015 license should be applied to and cover the cost of the 2016 license. Mr. Clineff further contends that this is the agreement he reached with representative of the State and that the State never issues business licenses without first receiving payment so the record is clear that the State must have agreed to use the \$75 he paid for his 2015 license to cover the amount due for his 2016 license. The Director of Revenue presented clear evidence demonstrating that, when Mr. Clineff received his business license in 2016, the State was issuing business licenses to applicants who had not paid their license fees.

6. Having considered the matter, the Board upholds the Director of Revenue's assessment of a license fee, penalty and interest against Mr. Clineff. He did business in Delaware in 2015 and 2016 and was required to have a business license to operate. 30 *Del. C.* § 2101 ("No person shall engage in or carry on any trade or business for which a license is required ... without first having obtained a license therefor ..."); 30 *Del. C.* § 2301(a)(7) (requiring any person operating as a mover to obtain a business license). He was also required to pay the fee associated with that business license. 30 *Del. C.* § 2101 ("No person shall engage in or carry on any trade or business for which a license is required ... without first having obtained a license therefor ... and paid therefor the fee or tax prescribed in this

part.”). The fact that the State’s computer system may have failed to identify Mr. Clineff’s business as properly licensed does not relieve Mr. Clineff of these responsibilities.

7. Further, to the extent Mr. Clineff contends that the State is barred from collecting the 2016 license fee due to agreements he reached with State representatives, he is incorrect. “As a general rule ... the ‘state is not estopped in the exercise of its government functions by the acts of its officers.’” *Harmon v. State of Delaware, Delaware Harness Racing Commission*, 62 A.3d 1198, 1201 (Del. 2013) (citation omitted).² Here, the Director of Revenue seeks to collect a license fee, penalty and interest that is due, and she is not barred from doing so by the acts of other state representatives.

8. For the foregoing reasons, the Board upholds the Director’s assessments as to fee, penalties and interest. Judgment is entered in her favor.









SO ORDERED this 26th day of August, 2019.

² There is an exception to this general rule in the employment context, but this case does not concern employment and, therefore, the exception does not apply.