

**BEFORE THE TAX APPEAL BOARD
OF THE STATE OF DELAWARE**

THOMAS and GINA SAMMLER,)	
)	
Petitioners,)	
)	
v.)	Docket No. 1835
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION AND ORDER

The Division of Revenue imposed additional tax on petitioners due to petitioners’ purported overreporting of deductions on their 2021 personal income tax returns. Petitioners protested that assessment. On August 3, 2023, the Division of Revenue sent the petitioners a determination letter that denied the petitioners’ protest. Petition ¶3, and Ex. B to Petition. The notice of determination stated, “If you do not agree with this determination, ... you may seek review of [it] ... by filing a written Petition with the Tax Appeal Board within sixty days of the date of this notice.” Petition, Ex. B.

On October 12, 2023, petitioners filed a petition with the Tax Appeal Board. Respondent moved to dismiss the petition on the ground it had not been filed within the sixty day window set by 30 *Del. C.* §§ 525 and 544.

On January 10, 2024, petitioners, by and through tax advisors who have represented numerous taxpayers before the Board, agreed to file an answering brief in opposition to respondent's motion by February 9, 2024. Petitioners did not file their brief by that date and, despite multiple notices from the Tax Appeal Board's secretary, the last of which advised petitioners that the Board would dismiss the case for failure to prosecute if petitioners did not respond by April 24, 2024, petitioners have never filed an answering brief.

Petitioners' failure to file an answering brief in opposition to respondent's motion to dismiss despite repeated reminders of their obligation to do so warrants dismissal of the case. *See Pierre-Louis v. Bank of America, N.A.*, 128 A.3d 993, 2015 WL 7353904, at *2 (Del. Nov. 19, 2015) (TABLE) (affirming dismissal when plaintiff failed to respond to defendants' motion to dismiss); *Fennell v. Hampton*, 7 A.3d 484, 2010 WL 4103011, at *2 (Del. Oct. 19, 2010) (TABLE) (same); *Jeanbaptise v. Clarios, LLC*, 2020 WL 2375047, at *3 (Del. Super. Ct. July 14, 2017) (dismissing suit due to plaintiff's failure to respond to motion to dismiss and noting that "[a] failure to respond to a motion to dismiss indicates that the claims are

abandoned.”). Petitioners retained experienced tax advisors and those advisors have not filed an answering brief on petitioners’ behalf. The case is dismissed.

SO ORDERED this ~~June~~^{12th} day of June, 2024.

Carl C. Selt

Arthur M. [Signature]

Robert W. Slavin

Mr. Lynn Tuleen

John M. Winters