

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

SIMONE SCHLOSS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 1836
	)	
STATE ESCHEATOR,	)	
	)	
Respondent.	)	

**DECISION AND ORDER**

Petitioner Simone Schloss has appealed the respondent State Escheator's notice of determination. The notice of determination denied petitioner's claim to unclaimed property that was escheated to and is currently held by the State of Delaware. Respondent has moved to dismiss petitioner's appeal claiming it is untimely, *i.e.*, it was filed with the Board more than 120 days after the notice of determination was issued. 12 *Del. C.* § 1167(a) (granting claimants 120 days from date notice of determination is sent to file appeal with Tax Appeal Board).

The issue before the Board is whether petitioner's appeal is timely. We find that it is because petitioner's original written letter--which identified the claim at issue and the date of the notice of determination, was signed by petitioner, clearly expressed petitioner's intent to appeal the notice of determination and was timely

received by the Board--was improperly rejected as a petition by the Board's administrative staff.

The original letter should have been accepted as a petition and, if the respondent felt it did not comply with applicable Board rules regarding form and content, the respondent could have sought dismissal on that basis. The Board, and not its administrative staff, would then have decided whether the original letter satisfied the Board's rules related to the form and content of petitions or whether petitioner should be directed to amend its petition in an effort to comply with those rules more fully.

In order to move this matter forward, the Board hereby deems petitioner's letter dated July 18, 2023 (which was received by the Board's administrative staff no later than August 29, 2023) a timely filed original petition, and the petition that petitioner filed with the Board on October 24, 2023, as petitioner's amended petition. Respondent is directed to respond to petitioner's amended petition in accordance with applicable rules. *See* Superior Court Civil Rule 12.

### **FACTUAL BACKGROUND**

The following is based on the facts set forth in the petition, the amended petition, the briefing on the motion to dismiss and the exhibits to those documents. We accept these facts as true only for purposes of deciding this motion.

Petitioner is a resident of Jamaica and, in 2022, submitted a claim to respondent seeking the return of unclaimed property held by Delaware. Another claimant also submitted a claim to the same unclaimed property. After evaluating the competing claims, the respondent issued a written notice of determination in petitioner's favor on January 31, 2023. The notice of determination was sent to petitioner by email and registered mail. The registered mailing included a check in the amount of \$21,556.34. Amended Petition Ex. B-4.3.

On or about May 3, 2023, petitioner emailed respondent's representatives stating that the registered mailing had not yet arrived in Jamaica and asking if a replacement check could be mailed to Detroit, Michigan. Amended Petition Ex. B-7.1. Respondent investigated and learned that "an altered and fraudulent version of the check issued to [petitioner in January 2023] was presented for payment." In response to this activity, respondent stopped payment on the \$21,556.34 check and on May 8, 2023, issued a revised notice of determination that rescinded the prior approval of petitioner's claim and informed petitioner that her claim was being denied. *Id.* The May 8 notice of determination informed petitioner that she had 120 days from May 8 (*i.e.*, until September 5, 2023) to file an appeal with the Tax Appeal Board.

Petitioner contends that on or about August 22, 2023, she sent a letter dated July 18, 2023 to the Office of Unclaimed Property (the "August Letter"). See Letter

and Federal Express receipt attached as an Exhibit to Petitioner's Answer to Motion to Dismiss. The August Letter states, "I use this medium to formally submit my request to appeal the decision to rescind approval of my claim with State of Delaware Office of Unclaimed Property . . . in the letter enclosed dated May 8, 2023 re Claim #508620." In addition to referencing the claim number, the August Letter enclosed correspondence with the Office of Unclaimed Property regarding the petitioner's claim. The August Letter is signed by the petitioner.

One of the Tax Appeal Board's administrative staff members received the August Letter on August 29, 2023, before the expiration of the 120 day time period to appeal the May 8, 2023 notice of determination. See Exhibit A to the Reply in support of motion to dismiss. The staff member emailed petitioner on August 30, 2023, stating, in pertinent part:

... in order to make a formal appeal before the Delaware Tax Appeal Board ("Board"), you must comply with the provisions of the Board's rules and regulations governing the filing of a formal petition of appeal and the jurisdictional time limits for filing such an appeal.

*Id.* The staff member's email effectively rejected the letter as a petition, but helpfully included a link to the Board's rules, attached documents that the Board has issued to help taxpayers and unclaimed property claimants file petitions and noted

the need to file an original and six copies of any petition (per applicable Board rules).<sup>1</sup>

On October 24, 2023, petitioner filed a petition with the Board that utilized one of the form petitions located on the Board’s website (the “October Petition”). Respondent then moved to dismiss the October Petition arguing it had not been filed within the 120 time period set by 12 *Del. C.* § 1167(a) (granting claimants 120 days from date notice of determination is sent to file appeal with Tax Appeal Board). See Respondent’s Motion to Dismiss. Petitioner’s answer to the motion to dismiss included the statement that “I was not aware that my submission thus far [i.e., the August Letter] were not counted as part of my response to this appeal ...” and attached the August Letter. Petitioner’s Answer to Motion to Dismiss. In reply, respondent argued that the staff member “made clear in her email that the [August Letter] was *not* considered a formal appeal” (emphasis in original) and that the August Letter is deficient and does not constitute a valid appeal because it “fails to

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<sup>1</sup> The Board appreciates and commends the work of its staff. Staff does an excellent job servicing the Board and managing the cases before it. Many taxpayers and unclaimed property claimants communicate directly with staff seeking guidance on their cases. Staff is highly professional and works to help taxpayers and claimants through the process, while not addressing the substance of matters before the Board (despite requests to do so). Providing assistance on the process while not answering substantive questions from taxpayers and unclaimed property claimants can be a difficult balance and the Board applauds staff’s efforts.

comport with the basic requirements of Tax Appeal Board Rules III and VI ....”  
Reply at 4 and fn 2.

## ANALYSIS

### *The Board’s Jurisdiction Over Unclaimed Property Determinations*

When an unclaimed property claimant receives a notice of determination from the State Escheator that denies, in whole or in part, the claimant’s claim, Title 12, Section 1167(a) of the Delaware Code grants the claimant the right to “apply for a hearing and determination of the claim by the Tax Appeal Board ....” 12 *Del. C.* § 1167(a). “The procedure before the Tax Appeal Board for such hearings is the same as that provided for by § 329 of Title 30,” *id.*, which provides that “[t]he Tax Appeal Board shall hear all appeals from ... statutes granting jurisdiction to the Board ... and the Board may affirm, modify or reverse any such determination.” 30 *Del. C.* § 329.

### *The Board’s Rules and the Incorporation of Superior Court Civil Rules*

Consistent with Title 30, Section 327 of the Delaware Code, the Board has adopted rules that govern proceedings before the Board. In pertinent part, the Board’s rules provide:

- Unless otherwise directed by the Board, all papers filed with the Board must be hand delivered or mailed to the Board, *i.e.*, petitions cannot be submitted by email and phone calls are not proper submissions. TAB Rule 4a.

- All papers filed with the Board shall have a caption, and a signature and copies as specified below. TAB Rule 3a.
- The proper caption shall be placed in full upon the first paper filed. The full given name and sur-name of each individual petitioner shall be set forth in the caption. TAB Rule 3c.
- The signature of the petitioner shall be subscribed in writing to the original of all pleadings. TAB Rule 3d.
- Except when otherwise ordered by the Board, an original and six confirmed copies of every pleading shall be filed with the Board. TAB Rule 3e.
- An appeal from the Director of Revenue shall be initiated by filing a petition with the secretary of the Board. TAB Rule 6a.<sup>2</sup>
- The failure of a petitioner to comply with Rule 3 or Rule 6 shall be grounds for dismissal of the proceeding for failure properly to prosecute. TAB Rule 6b.
- A petition to the Board shall:
  - be substantially in accordance with Form A shown in the appendix;<sup>3</sup>

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<sup>2</sup> The Board's rules were adopted at a time when there were few, if any, appeals from determinations by the State Escheator. As a result, the rules contain references to terms such as tax and Director of Revenue that do not apply to unclaimed property claims before the State Escheator. The intent of the rules is to provide a structure for all appeals before the Board, and the Board's rules apply to appeals from determinations made by either the Director of Revenue or the State Escheator.

<sup>3</sup> Form A deals with appeals from determination by the Director of Revenue. The Board has adopted other forms to assist unclaimed property claimants who seek to appeal determinations by the State Escheator. The Board has not amended its rules to reflect these efforts.

- contain a caption, proper allegations showing jurisdiction of the Board, a statement of the amount in controversy, the nature of the tax in dispute, and the period in controversy;
- contain clear and concise statements of each and every error which the petitioner alleges to have been committed by the Director of Revenue;
- contain a clear and concise statement of the facts supporting each assignment of error;
- set forth a prayer setting for the relief sought by the petitioner;
- include the signature of the petitioner or counsel; and
- attach copies of any notice of assessment or notice of determination. TAB Rule 6c.<sup>4</sup>

The Board's rules further state that "Where these rules are silent or do not otherwise provide for a matter, the Superior Court Civil Rules shall govern to the extent they provide for the matter." TAB Rule 24. Superior Court Civil Rule 12(e) allows a defendant to move for a more definitive statement if the defendant believes a petition lacks clarity, and Superior Court Civil Rule 15 grants petitioners the right to amend their petitions in certain instances and for the Court to grant leave to amend a petition in others. These court rules apply to proceedings before the Board. *See*

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<sup>4</sup> The Board notes that almost no petitions filed with the Board satisfy all of the requirements of TAB Rule 6c regarding the form of petition. This lack of compliance has not impaired the prosecution of appeals before the Board. Almost all petitions contain sufficient information such that the respondent and Board can identify the basic factual and legal issues in dispute.



also TAB Rule 6h (giving the Board discretion to allow a party to amend its petition or answer thereto).

***The Board Determines Whether a Petition Satisfies its Rules***

Whether a petitioner has complied with the Tax Appeal Board Rules in terms of form and content of the petition is an issue for the Board to resolve, not its administrative staff. If staff receives a document through the mail or by hand delivery that challenges or objects to a determination by the State Escheator or the Director of Revenue, staff should treat the document as a petition, open a case file and assign the matter a docket number.<sup>5</sup>

If the respondent believes the petition fails to satisfy one or more of the Board's rules, the respondent may move to dismiss. The Board will then decide what steps should be taken.

In general, the Board believes unclaimed property claimants and taxpayers should be given the opportunity to correct deficiencies in the form and content of their submissions and that, in many instances, dismissal of an initial, non-rule-compliant petition is not the preferred course of action. Rather, the claimant or taxpayer should file an amended petition in an effort to cure the deficiencies, but even then lack of complete compliance with the Board's rules likely will not be a

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<sup>5</sup> Email is not a rule-compliant way to initiate an appeal from a determination. *See* TAB Rule 4a. If staff receives an email regarding an appeal, neither the email nor any attachment thereto is a petition and neither should be treated as a petition.

strong basis to dismiss the petition. *See* footnote 4. The Board prefers to adjudicate disputes on the merits rather than resolve them based on hyper-technical compliance with rules concerning the form of pleading. *See Apartment Communities Corp. v. Martinelli*, 859 A.2d 67, 69 (Del. 2004) (“Most courts have ‘adopted a policy in favor of resolving case on their merits ...’”) (citation omitted).

*The August Letter Was Sufficient and Timely*

The Board has reviewed the August Letter and determines that its form and content are sufficient to start the appellate process. The August Letter is in writing, expresses petitioner’s desire to appeal the notice of determination related to a specific, identified claim, is signed by petitioner and was received by the Board before the 120 day time period to file an appeal expired. Accordingly, the petitioner’s appeal is timely, and respondent’s motion must be denied.

Petitioner filed the October Petition. It more closely tracks the Board’s form of petition for unclaimed property appeals. We deem the October Petition to be an amendment to the August Letter and direct respondent to respond to the October Petition in accordance with applicable rules. *See Superior Court Civil Rule 12.*

SO ORDERED this 27<sup>th</sup> day of June, 2024.





Joan Winters

Robert Glavin / 405

Mr. Lynn Keller