

Decision of the Tax Appeal Board - Date: March 28, 1974

Docket Nos. 524, 525, 526 and 527

William S. Budinger

Personal Income - Assessment of Additional Taxes - Limitation -

Assessment against the taxpayer made by the Tax Commissioner in 1968 for the years 1965 and 1966 were timely made; assessments for 1963 and 1964 were barred by the three-year limitation. The taxpayer's appeals with regard to the assessments for 1965 and 1966 which were filed in 1973, were also not timely filed within the required time period.

Decision of the Tax Appeal Board - Date: May 9, 1974

Docket No. 520

Myrtle C. Shorts

Personal Income - Jurisdiction of Tax Appeal Board - Timeliness of Taxpayer's Appeal.

Tax Appeal Board accepts jurisdiction and reluctantly allows the taxpayer's appeal, filed October 31, 1972, from a decision of the Secretary of Finance rendered on August 1, 1972. This is because there is no evidence establishing a mailing date for the notice of disallowance of the claim for refund. Therefore, since the taxpayer is allowed 90 days after the mailing of the notice in which to file an appeal there is no way for the Board to determine if the appeal was or was not timely made.

Personal Income - Amended Returns - Need for Additional Evidence to Determine Taxpayer's Intent.

The taxpayer is ordered to reproduce her 1969 and 1970 federal returns, and both she and the Director of Revenue are to comply with applicable rules of the Tax Appeal Board to demonstrate the taxpayer's intent in 1969 and 1970 with regard to the instalment basis of reporting. These facts would indicate an intent consistent or inconsistent with her claim that, because she failed to report a sale of her property on the instalment basis in those years, she paid more tax than was necessary and is entitled to a refund.

Decision of the Tax Appeal Board - Date: December 14, 1972

Docket Nos. 515, 515A, 515B

Edward and Virginia Gregory

Personal Income - Returns - Joint Return - Change of Election - Separate Return.

Taxpayers filing a joint return cannot change their election and file separate returns after the due date of the return. The instructions provided with the return for the tax years in question (1968-1970) specifically deny taxpayers the right to change their election after the due date. Instructions have the same weight as regulations; and since they do not conflict with the tax law, they are controlling.

Decision of the Tax Appeal Board - Date: December 14, 1972

Docket No. 510

Clare A. Stewart, Jr.

Personal Income - Deductions - Medical Expenses (Prior Law).

The cost of installing an air-conditioning system and filter in a taxpayer's home upon the directions of a doctor for the medical care of the taxpayer's wife is deductible as a medical expense. However, to the extent this addition of the taxpayer's home increases its value, the deduction is not allowed.

NOTE: The above relates to the law in effect prior to January 1, 1971. Under the current law, the starting point for computing taxable income is federal taxable income.

Decision of the Tax Appeal Board - Date: October 2, 1972

Docket No. 508

Frank J. Gleeson

Personal Income - Deficiency-Interest - Payment of Deficiency.

A taxpayer is liable for interest from the original due date on an income tax deficiency despite the fact that almost three years elapsed between the time his return was filed and the deficiency notice was sent. As long as a deficiency notice is timely (made not later than three years after the return is filed), interest is applicable. Moreover, the tax law does not authorize the waiver of interest. In addition, the acceptance of the taxpayer's deficiency payment (exclusive of interest) does not prevent the Division of Revenue from later collecting the interest.

Decision of the Tax Appeal Board - Date: September 14, 1973

Docket No. 506

R. Baylin Company

Manufacturers, Merchants License - Tobacco Products Wholesaler -
Inclusion of Cigarette Tax in License Tax Base.

The value of tax stamps affixed to cigarettes by a wholesaler prior to their sale must be included in the wholesaler's merchants license (gross receipts) tax base. The cigarette tax is includible in taxable gross receipts as part of the consideration received by the wholesaler for goods sold within Delaware under Section 2901 and 2902, Title 30 of the Delaware Code. The fact that the wholesaler is a cigarette tax stamp affixing agent of the state does not warrant its special treatment for gross receipts tax purposes.

Decision of the Tax Appeal Board - Date: November 4, 1972

Docket No. 504

Harry and Violette Copelin

Personal Income - Support or Alimony Payments - Deductibility -
(Prior Law).

Support or alimony paid to an ex-wife is not deductible by the ex-husband. Although the ex-wife is taxed in New York on the amount paid to her, she pays no tax in this State for which relief could be given to the ex-husband.

NOTE: The above reflects the law in effect prior to January 1, 1971. Under current law, the starting point for computing taxable income is federal taxable income.