

Respondent

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

CLINICAL EEG LAB., INC.,)	
)	
Petitioner,)	
)	
v.)	Docket No. 538
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

Before: Cyric W. Cain, Jr., Maurice A. Hartnett, III, Esquire
Joseph J. Longobardi, Jr., Esquire, Rhett McGriff,
Nettie C. Reilly.

Joseph I. Haggerty for Petitioner

Stephen R. Spiller, Esquire, Special Counsel for Respondent.

DECISION

Maurice A. Hartnett, III, Chairman: The facts are undisputed.

Petitioner is a Delaware corporation. All of the stockholders of petitioner are physicians licensed to practice their profession in Delaware.

Petitioner was organized to operate a scientific laboratory. The petitioner relied on professional tax advice that the petitioner did not need a State license to operate a scientific laboratory since all of the stockholders of the corporation were individually licensed to practice their professions in Delaware. The tax advisor believed that petitioner was analogous to a partnership.

The Secretary of Finance determined that petitioner must be licensed. Petitioner then promptly paid the license fees for the years it had operated without a license and tendered the interest and penalties as assessed by the Secretary of Finance.

Petitioner then petitioned this Board to abate the penalties assessed because of the failure of petitioner to timely obtain a State license. Petitioner makes no claim for a refund of the interest.

Petitioner prayed that the penalties be remitted because petitioner alleged it had reasonable cause to believe no license was required and it had no intention to evade the law.

§2105, Title 30, Delaware Code provides for the imposition of interest and civil penalties for the failure to pay the fees or tax required for occupational and business licenses and taxes. The penalties imposed upon petitioner fall within the provisions of this section of the Code.

§2108(a), Title 30, Delaware Code is the statutory basis for a refund of a penalty assessed for late payment of license fees. It provides:

"(a) Except as otherwise specifically provided in this part, any person may submit to the Secretary of Finance, Tax Appeal Board and the Superior Court, in the order named, as provided, a claim for refund of any tax or license fee imposed by this part alleged to have been erroneously or illegally assessed or paid; or of any interest or penalty alleged to have been collected without authority; or of any sum alleged to have been excessive; or in any manner wrongfully collected from such person at any time within 3 years from the August 1 following the June 30 expiration date of the license to which such payment relates; or 30 days from the date of payment of any such amount, whichever is later."

The language of this section leaves much to be desired. It is unclear whether a remitter of a penalty is limited to cases where the penalty was imposed without authority or also includes excessive penalties.

If we assume, arguendo, that a penalty may be remitted if "excessive", then this Board has jurisdiction to remit the penalty.

But is the penalty excessive? We think not. (See Van Meter v. Prima Co. (7th Cir. Ct. of App., 1937) 88 F2d 336.

It should be noted that the legal requirements for refund of penalties pursuant to §2108, Title 30, Delaware Code is not the same as the legal requirements for remission of penalties under other sections of Title 30. Section 2108 (part III, Title 30) pertains to the refund of penalties in connection with occupation and business licenses and taxes.

Section 1182 (part II, Title 30) pertains to the remission of penalties assessed for late payment of income taxes. The provisions for a refund are different in the two different parts of Title 30.

The petition for refund is denied.

Spett McGriff
J. Gausbach
Arthur W. Cain
Nettie C. Reilly
Marce Albert

Date 5/21/74