

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

WILLIAM V. & FREDA E. BURTON,)
)
 Petitioners,)
)
 v.) Docket No. 586
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

Before: Maurice A. Hartnett, III, Esquire, Cyric W. Cain, Jr.,
Rhett McGriff, Nettie C. Reilly, Joseph S. Yucht, Esquire,
Board Members.

James T. Cannon, Jr., C.P.A., for Petitioner.

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

DECISION

Petitioners failed to file Delaware Income Tax returns for calendar years 1965 through 1972, although they had a substantial income. The total income tax due to the State (excluding penalties and interest for failure to timely file) exceeded \$1,000 for each year they did not file returns.

Petitioners have never filed returns for at least several of the years in question. The amount of the tax they owe has been computed by the Director of Revenue from data made available from the Internal Revenue Service.

Respondent in addition to seeking the amount of the taxes due seeks to impose interest and a 100% penalty.

Petitioners do not dispute the amount of their income taxes due, but seek relief from the 100% penalty and the interest. Section

1195(b), Title 30 Delaware Code now imposes as a penalty an amount equal to 50% of the deficiency if the deficiency is due to fraud. This section states that this penalty is in lieu of the 5% penalty provided for by section 1195(a), Title 30.

We think that the evidence that petitioners did not file an income tax return for the years 1965 through 1972 is adequate to show fraud on their behalf. The claim of the petitioners that they were afraid to file returns because they did not have sufficient funds to pay their taxes and were financially unsophisticated does not negate their fraud in not filing returns.

In view of the present provisions of section 1195(b), Title 30, Delaware Code, the penalty assessed however, should be 50% and not 100%.

SO ORDERED.

James A. Suttle
Joseph J. York
Matthew C. Leidy
Cyril W. Cairns
Shett McGuff

Date 3/12/75

SYNOPSIS

DOCKET NO. 586

TAX SEGMENT: PERSONAL INCOME TAX

ISSUE: Petitioners failed to file personal income tax returns for calendar years 1965 through 1972. Based on data received from Internal Revenue Service, Respondent assessed Petitioners for taxes due in addition to imposition of interest and penalty at the rate of 100 percent of the deficiency.

TAB DECISION: The Tax Appeal Board concluded Petitioners failure to file tax returns for calendar years 1965 through 1972 was adequate evidence of fraud on their behalf. However, penalty of 100 percent of taxpayers' liability must be reduced to 50 percent the maximum rate in effect by statute for taxable years involved.

NOTE: Amended, Ch. 181, Laws 1977, effective July 20, 1977.

DECISION: For Respondent

DECISION DATE: March 12, 1975