

TAX APPEAL BOARD OF THE STATE OF DELAWARE

HARVEY and CAROLE W.)
BILLINGHAM,)
)
Petitioners,)
)
v.) Docket No. 587
)
DIRECTOR OF REVENUE,)
)
Respondent.)

Before: Cyric W. Cain, Jr., Rhett McGriff, Nettie C. Reilly,
and Joseph S. Yucht, Esquire, Members.

Harvey W. Billingham, pro se.

Charles Snyderman, Esquire, Special Counsel for Respondent.

DECISION AND ORDER

Joseph S. Yucht, Esquire, Member: Petitioners were residents of the State of Delaware for the first three quarters of the calendar year 1969. They sold their residential property in Delaware and moved to Pennsylvania. Petitioners received more money from the sale of their Delaware residence than they had invested therein, and used said proceeds to purchase a new residence in Pennsylvania. Petitioners did not report the "gain" derived from said sale on their 1969 Delaware Income Tax Return, but did deduct a portion of the Delaware Realty Transfer Tax. The Division of Revenue audited Petitioners' said 1969 Return and increased Petitioners adjusted gross income by \$4,000.00, to reflect the "gain" realized from the sale of their residence.

This adjustment resulted in an increase in Petitioners' tax in the amount of \$320.00. The said Division also claimed that interest was due from "4-30-70" (the date the 1969 return and tax were due) to "12-30-73" (the date the assessment was made by the Division of Revenue) in the amount of \$140.80. The Director of Revenue sent a Notice of Assessment, dated January 2, 1974, to Petitioners, informing them of the proposed tax assessment of \$320.00 and the interest charge of \$140.80 making a total assessment of \$460.80.

When Petitioners were not able to resolve the matter with the Respondent, a Notice of Appeal was filed with the Tax Appeal Board by Petitioners.

At the time of the hearing Mr. Billingham admitted he owed the \$320.00, but contested the Director of Revenue's right to assess interest. Mr. Billingham filed a document entitled "Stipulation" which the Board considered as a statement of the contentions of the Petitioners. The document provided, inter alia, as follows:

"1. There has never been any intent to avoid payment of this tax.

2. The tax instructions are not clear on the sale of a primary residence.

3. There has been no profit realized on this sale to provide surplus to be taxed. All proceeds were used to purchase the home we live in.

4. Delaware modified tax law on January 1, 1971, recognition (sic) a change was necessary.

5. The tax in question was filed early in 1970. The Director of Revenue sent Notice of Assessment on 3/29/73.

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The petitioners admit technical and legal responsibility for the tax due. The petitioner asks relief of all penalties for reasons stipulated above. Why should well intentioned taxpayers be penalized for the time it took the Director of Revenue to send notice?"

The Board concluded that the Petitioners were questioning the Director of Revenue's right to impose interest upon the deficiency assessment. No penalty, as such, was assessed by the Director although so contended by the Petitioners. Petitioners admitted that as of the date of the hearing they did not pay the amount of the deficiency assessment - \$320.00.

The Director of Revenue contended that as of 12/31/73 the sum of \$460.80 was due - \$320.00 being the amount of the deficiency assessment and \$140.80 as interest from 4/30/70 to 12/30/73 - and from that date on, interest on said sum in the amount of 1% per month.

The Board notes that the applicable sections of the Delaware Code were those that pertained to the 1969 taxable year and accordingly reference will be made to sections of the Delaware Code that were then applicable. Specifically, the provisions of 57 Delaware Laws Chapter 737, commonly referred to as the "Piggy Back Law", are not applicable since, by its own terms, it shall take effect with the taxable years beginning on and after January 1, 1971.

Section 3 of 57 Laws of Delaware, Chapter 737 provides for the continuation of those provisions of Chapter 11, Title 30, Delaware Code in effect when this Act was passed, so that the

old laws can be administered after the "Piggy Back" law became effective.

The applicable law pertaining to interest that was in effect at the time the payment of the tax was due was 30 Del. Code §1187(a), which provides as follows:

"In any case where additional tax is found to be due, if it appears that the return was made in good faith and understatement of the tax is not due to any fault of the taxable there shall be no penalty added because of such understatement but interest shall be added to the amount of the deficiency at the rate of one per cent for each month or fraction of a month." (Note the rate was increased from one-half of one percent to one per cent on June 28, 1969 as a result of 57 Del. Laws Chapter 185.)

Since the Director of Revenue concluded Petitioners' 1969 return was made in good faith and the understatement of the tax was not due to any fault of the Petitioners, he did not add any penalty. No claim to the contrary was argued before the Tax Appeal Board by the Director and the Board did not conclude that any penalty should be assessed.

The Board concluded that since the Petitioners "admitted" that the tax in the amount of \$320.00 was due and that as of the date of the hearing said amount was not paid by the Petitioners, the Director of Revenue was correct in assessing interest in the amount of \$140.80. Actually, interest on the unpaid tax is due until the tax is paid and since said tax has not been paid, at least as of the date of the hearing, the amount of interest due would be substantially more. The Board does not think that justice requires the payment of more than the amount of interest imposed by the Director of Revenue if

said tax sum of \$460.80 is paid within thirty (30) days of the date of this Order, since there has been an unusually long delay in having Petitioners' Appeal decided and the delay was not the fault of Petitioners. In the event said total sum of \$460.80 is not paid within said thirty (30) day period or a timely appeal filed from this decision, then interest shall be assessed at the rate of one percent for each month or fraction of a month on the sum of \$320.00, calculated from April 30, 1970 until the date of payment.

Accordingly Petitioners' claim for relief from paying the interest as aforesaid is denied.

IT IS SO ORDERED.

Cyril W. Crain
Paul H. [unclear]
Matthew R. [unclear]
[unclear]

Dated: July 9, 1975

SYNOPSIS

DOCKET NO. 587

TAX SEGMENT: PERSONAL INCOME TAX

ISSUE: Petitioners were residents of the State of Delaware for the first three quarters of the calendar year 1969. They sold their residential property in Delaware and moved to Pennsylvania. The gain realized on the sale of their Delaware residence was not reported to Delaware, however, they did deduct the Realty Transfer Tax.

Petitioners were audited by the Division of Revenue and increased their adjusted gross income to reflect the gain realized from the sale of their residence. They were assessed additional tax plus interest computed from the due date of the return (4/30/70) to the date of Notice of Assessment (12/30/73). No penalty was assessed.

The question was raised whether the Director of Revenue had the right to impose interest on the deficiency assessment as computed.

TAB DECISION: The Tax Appeal Board held that the applicable sections of the Delaware Code were those pertaining to 1969 taxable year and prior to 1971 (30 Del. C. § 1187 (a), when the provisions of 57 Delaware Laws, Chapter 737, commonly known as the "Piggy-back" concept was enacted and effective for taxable years beginning January 1, 1971. Furthermore, the provisions of such Act provided continuation of prior statute to be administered after the Act became effective. Therefore, interest as computed on the tax deficiency was properly assessed. It was further held by the Board that additional interest would not be due if the tax and interest was paid within 30 days or a timely appeal was filed from the date of the decision.

30 Del. C. § 1187 (a) (effective for years prior to 1971) provides:

"In any case where additional tax is found to be due, if it appears that the return was made in good faith and understatement of the tax is not due to any fault of the taxable there shall be no penalty added because of such understatement but interest shall be added to

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the amount of the deficiency at the rate of one per cent for each month or fraction of a month." (Note the rate was increased from one-half of one per cent to one per cent on June 28, 1969 as a result of 57 Del. Laws, Chapter 185.)

DECISION: For Respondent

DECISION DATE: July 9, 1975