

TAX APPEAL BOARD
OF THE STATE OF DELAWARE

FRANK A. AND MARIE C. ROBINO,)
Petitioners,)
v.) Docket No. 677
DIRECTOR OF REVENUE,)
Respondent.)

MICHAEL A. AND MARY R. POPPITI,)
Petitioners,)
v.) Docket No. 678
DIRECTOR OF REVENUE,)
Respondent.)

Before: Joseph S. Yucht, Esquire, Chairman, Cyric W. Cain, Jr.,
Nettie C. Reilly, and Harry B. Roberts, Jr., members.
(James C. Eberly, Esquire, Vice-Chairman did not partic-
ipate in this case.)

Norman H. Rosenberg, CPA of Belfint, Lyons & Shuman, P.A. for
Petitioner

John P. Fedele, Esquire for Respondent

DECISION AND ORDER

Joseph S. Yucht, Esq., Chairman:

The two cases have been consolidated since they involve
similar facts and the same issues. The facts are not in dispute
and were stipulated to as follows:

1. Petitioners are individuals.
2. The controversy pertains to the question of interest
on overpayments of Personal Income Taxes for the calendar year 1974.
3. The Internal Revenue Service conducted an examination
of the corporate income tax return filed by Farmap Holding Co., Inc.
(hereinafter referred to as "Farmap") for the tax year which ended

January 31, 1974, and of the individual income tax returns filed by Michael A. and Mary R. Poppiti (hereinafter referred to as "Poppiti") and Frank A. and Marie C. Robino (hereinafter referred to as "Robino") for the year which ended December 31, 1974.

4. The examination of all of the returns was concluded on October 31, 1977, when a settlement was accepted by the Acting Assistant Chief, Philadelphia Appellate Branch Office, on behalf of the Commissioner of Internal Revenue. Pursuant to the terms of the settlement, Farmap was liable for additional tax and both Poppiti and Robino were entitled to refunds for overpayments of tax.

5. Pursuant to the provisions of 30 Del.C. §1176 Farmap, Poppiti and Robino each filed timely "change reports" with the Division of Revenue on December 14, 1977.

6. Pursuant to the provisions of 30 Del.C. §1220(a) the additional liability of each of the individual petitioners as transferees of the assets of Farmap, was reflected on each individual "change report" filed as a reduction of the claimed overpayment of each of the individual petitioners.

7. The "change reports" were accepted by the Division of Revenue and it computed and contends that interest on the transferee assessment and individual overpayments to be as follows, according to 30 Del.C. §1199(b) (3):

	<u>Farmap</u>	<u>Poppiti</u>	<u>Robino</u>
Additional Liability.....	\$41,925.00		
Interest from 5/1/74 to Dec., 1977 at 1% per month (44%).....	18,447.00		
	60,372.00		

	<u>Farmap</u>	<u>Poppiti</u>	<u>Robino</u>
One-half to each.....		\$30,186.00	\$30,186.00
Less: Overpayment.....		<u>48,305.27</u>	<u>34,196.67</u>
Net Overpayment.....		18,119.27	4,010.67
Interest from 1/29/78 to 3/29/78 at 1% per month on net over- payment (2%).....		<u>362.39</u>	<u>80.22</u>
Amount Refunded.....		<u>\$18,481.66</u>	<u>\$ 4,090.89</u>

8. Petitioners contend that interest on the transferee assessment and individual overpayments should be computed as follows, according to 30 Del.C. §1199(b)(2):

	<u>Farmap</u>	<u>Poppiti</u>	<u>Robino</u>
Additional Liability.....	\$41,925.00		
Interest from 5/1/74 to Dec., 1977 at 1% per month (44%).....	<u>18,447.00</u>		
	60,372.00		
One-half to each.....		\$30,186.00	\$30,186.00
Less: Overpayment.....		48,305.27	34,196.67
Interest on overpayment from 6/16/74 to Dec. 1977, at 1% per month (42%).....		20,288.21	14,362.60
Interest from 1/29/78 at 1% per month on net overpayment (2%) as determined by Director of Revenue.....		<u>362.39</u>	<u>80.22</u>
Total.....		<u>68,955.87</u>	<u>48,639.49</u>
Total overpayment.....		38,769.87	18,453.49
Amount Refunded.....		<u>18,481.66</u>	<u>4,090.89</u>
Additional interest due to Petitioners from Respondent.....		<u>\$20,288.21</u>	<u>\$14,362.60</u>

The issue is whether interest on an overpayment of Personal Income Tax resulting from the filing of an amended income tax return is to be computed pursuant to 30 Del.C. §1199(b)(2) or 30 Del.C. §1199(b)(3). The pertinent provisions of 30 Del.C. §1199 are as follows:

"(a) General. Subject to the limitations specified in subsection (b), interest shall be allowed and paid upon any overpayment in respect of the tax imposed by this Chapter at the rate of one percent per month or fraction thereof.

(b) Limitations -

(1) * * *

(2) Interest shall be allowed on any overpayment commencing with the 46th day after the last date prescribed for filing the return of such tax, or in case the return is filed after such last date, the 46th day after the return is filed.

(3) In the case of an overpayment resulting from the filing of a claim for refund or an amended return, interest shall be allowed commencing with the 46th day after such claim or amended return is filed.

* * * * *


The meaning of said Section 1199 is very clear. It is the authority by which a taxpayer is entitled to collect interest on personal income tax overpayments. The difference between subsections (2) and (3) of said Section 1199 is the date on which the interest shall commence to be calculated. Both sub-sections indicate that said interest commences with the 46th day after a particular event occurs. The Board finds that the particular event causing interest to be due is the filing of the return or claim for refund first indicating that an overpayment has been made. If that information first appeared in an original return then pursuant to 30 Del.C.

§1199(b) (2) interest would be calculated from the 46th day after said return was filed. If that information first appeared in an amended return or a claim for refund, which is subsequent to the filing of the original return, then pursuant to 30 Del.C. §1199(b) (3) interest would be calculated from the 46th day after such claim or amended return is filed. To hold otherwise would require the Respondent to pay interest on an overpayment for a period of time which the Respondent had no notice of any such overpayment. In the matters before us, neither original returns reported an overpayment for Petitioners' 1974 Personal Income Taxes. Petitioners first notified Respondent on December 14, 1977 that they were now claiming an overpayment for their 1974 Personal Income Taxes when they filed an amended return.

We do not agree with Petitioners' argument that to hold as we have could result in a taxpayer earning more interest by failing to file an amended return and a change report than by filing a change report and an amended return. In order for a taxpayer to be entitled to an overpayment he must either claim it in his original return or file an amended return. Once the claim is made, then interest is calculated thereon in accordance with said Section 1199.

Accordingly, we hold that Respondent properly calculated interest in these matters in that interest on an overpayment first claimed in an amended return commences in accordance with the provisions of 30 Del.C. §1199(b) (3).

IT IS SO ORDERED.



Nathaniel E. Reilly

Cyril W. Spivey

Mary B. Kukulski

Dated: December 14, 1979

SYNOPSIS

DOCKET NOS. 677 and 678

TAX SEGMENT: PERSONAL INCOME TAX
 Computation of Interest on Overpayment

ISSUE: The question is whether interest on overpayment should be computed pursuant to 30 Del. C. § 1199 (b) (2) or 30 Del. C. § 1199 (b) (3).

 Is the taxpayer entitled to collect interest from the filing of original return whereas amended return was filed at later date? Or is the amended return to be considered a claim for refund in that the information was not on the original return?

TAB DECISION: Held for the Respondent in that the amended return was in effect a claim and interest should be calculated from date of that return.

DECISION: For Respondent

DECISION DATE: December 14, 1979