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BEFORE THE TAX APPEAL BOARD  
OF THE STATE OF DELAWARE

ALFRED J. VILONE, INC., : Docket Number 680 and 681  
Petitioner, :  
v. :  
DIRECTOR OF REVENUE, :  
Respondent. :

BEFORE: Joseph S. Yucht, Esquire, Chairman; James C. Eberly, Sr.,  
Vice-Chairman; Cysic W. Cain, Jr.; Harry B. Roberts, Jr.  
and Nettie C. Reilly, Members

Joseph Possenti and Jared Fischel for Petitioner  
John P. Fidele, Esquire, Assistant Attorney General for Respondent

DECISION AND ORDER

James C. Eberly, Sr., Esquire, Vice-Chairman: The facts presented to the Tax Appeal Board orally at a Pre-Trial Conference held before the Board on December 8, 1978, and by stipulation, which facts are pertinent to this decision are as follows:

1. Petitioner is a corporation with its principal place of business at 2213 Concord Pike, Fairfax, Wilmington, Delaware.

2. Petitioner reported taxable income on its federal corporate tax return for its fiscal year ending July 31, 1977.

3. Petitioner reported a loss for the same fiscal year as regards his Delaware corporate income taxation.

4. Petitioner filed a claim for a refund with Respondent for the Delaware corporate losses in the fiscal year ending July 31, 1977.

5. Respondent denied Petitioner's claims for refund and gave Petitioner notices of this denial, for both cases herein considered, said notices both bearing the date of June 19, 1978.

6. Petitioner filed a Notice of Appeal of this denial, both Notices of Appeal being received by the Tax Appeal Board, July 20, 1978.

At the Pre-Trial conference, whereat Petitioner and Respondent were represented, the issue of the timeliness of the appeal was noted by the Board, and both parties were asked to brief this issue. It should be noted that the Respondent and Petitioner stipulated that the appeal to this Board was timely made.

Rule #4 of the Tax Appeal Board states, in pertinent part:

". . . Documents filed by mail are sent at the risk of the sender and no paper shall be considered filed until actually received by the Secretary of the Board."

The notice of determination denying Petitioner's claim for refund was dated June 19, 1978, and the Notice of Appeal was received by the Secretary of the Board on July 20, 1978. The fact that the Notices of Appeal filed in these instant cases were received on the thirty-first day after the date of the

date of the Notice of Determination has the effect of denying the Tax Appeal Board any jurisdiction over the matter. It is well settled law that the parties to a dispute cannot stipulate to jurisdiction over a matter where no jurisdiction exists.

Therefore, we hold that the Tax Appeal Board has no jurisdiction over these instant cases, and the appeals must be dismissed.

IT IS SO ORDERED this 8th day of June A.D. 1979.

Joseph S. Yucht  
JOSEPH S. YUCHT

James C. Eberly, Sr.  
JAMES C. EBERLY, SR.

Cysic W. Cain, Jr.  
CYSIC W. CAIN, JR.

Harry B. Roberts, Jr.  
HARRY B. ROBERTS, JR.

Nettie C. Reilly  
NETTIE C. REILLY

SYNOPSIS

DOCKET NO. 680 and 681

TAX SEGMENT: CORPORATION INCOME TAX  
- Claim for Refund  
- Timely filed Notice of Appeal

ISSUE: The question is whether timely Notice of Appeal was filed so that the Tax Appeal Board could hear the case.

The notice of determination denying claim for refund was made 6/19/79 and the notice of Appeal was received 7/20/78.

Rule 4 of the Tax Appeal Board states:

"Documents filed by mail are sent at the risk of the sender and no paper shall be considered filed until actually received by the secretary of the Board."

The Notices of Appeal were filed on the 31st day and the law states they must be filed within 30 days.

TAB DECISION: The Tax Appeal Board has no jurisdiction over these cases.

DECISION: Petition is denied.

DECISION DATE: June 8, 1979