

TAX APPEAL BOARD

OF THE STATE OF DELAWARE

JOHN W. FREY, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 684  
 )  
 DIRECTOR OF REVENUE, )  
 )  
 Respondent. )

Before: Nettie C. Reilly, Cyric W. Cain, Jr., and Harry B. Roberts, Jr. members: (Neither Joseph S. Yucht, Esquire, Chairman nor James C. Eberly, Esquire, Vice-Chairman, participated in this case)

Angela C. Frey, Petitioner's wife, for Petitioner

John P. Fedele, Esquire for Respondent

DECISION AND ORDER

Nettie C. Reilly, Member: The taxes in controversy are income taxes for the calendar year 1971.

Petitioner filed his 1971 income tax return on April 12, 1973. Subsequently, Respondent by letters dated July 13, 1973 and December 6, 1973 requested Petitioner to furnish Respondent a copy of his 1971 federal income tax return. Petitioner did not respond to either letter.

When Petitioner did not respond to the aforesaid requests of Respondent, Respondent caused an audit report for Petitioner's 1971 taxes to be made and on May 29, 1974 mailed a copy thereof to Petitioner. At the same time, Respondent also mailed a Notice of Assessment to Petitioner indicating that a proposed assessment would be assessed against Petitioner unless Petitioner within 90 days either filed a written protest with the Director of Revenue or filed a

Petition for Review with the Tax Appeal Board. Petitioner did neither within said 90 day period.

Subsequently, Respondent made the following assessment against Petitioner:

Tax Due	\$ 79.40
Penalty	19.85
Interest	<u>20.64</u>
	\$119.89

When Petitioner did not pay the sum, Respondent on August 17, 1976 obtained a Judgment in the Superior Court of the State of Delaware in the amount of \$149.11, additional interest having been deemed to be due.

On August 28, 1978, Petitioner filed his Notice of Appeal with the Tax Appeal Board seeking a review of the assessment of the taxes, interest and penalty imposed for his 1971 taxes. Respondent filed a timely Answer and a Motion to Dismiss based on the Statute of Limitations.

Unless a timely appeal is filed with the Tax Appeal Board in accordance with the provisions of 30 Del.C. §1203 the Tax Appeal Board does not have jurisdiction over the matter. Accordingly, we hold that the Petition filed by Petitioner on August 28, 1978 was not timely filed and the Motion to Dismiss the Petition filed by Respondent is granted.

IT IS SO ORDERED.

Nettie C. Reilly  
Cyril W. Cain  
Harry B. Roberts

Dated: December 14, 1979

SYNOPSIS

DOCKET NO. 684

TAX SEGMENT:       PERSONAL INCOME TAX  
                      - Statute of Limitation  
                      - Timely Election

ISSUE:                Petitioner filed Notice of Appeal with the Tax Appeal Board seeking review of assessment of 1971 deficiency in income taxes, penalty and interest on August 28, 1978 whereas audit report and Notice of Assessment was mailed to petitioner on May 28, 1974.

TAB DECISION:        Timely appeal was not filed with the Tax Appeal Board within the 90 day period as required by 30 Del. C. § 1203. Tax Appeal Board does not have jurisdiction over the matter.

DECISION:            For Respondent

DECISION DATE:      December 14, 1979