

BEFORE THE TAX APPEAL BOARD
OF THE STATE OF DELAWARE

KENNETH A. FERA and JOAN B. : Docket Number 688
FERA, :
 : Petitioners, :
 : :
 : v. :
 : :
DIRECTOR OF REVENUE, : :
 : Respondent. :
 : :

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

Petitioners represented pro se
John P. Fedele, Esquire, Assistant Attorney General for Respondent

DECISION AND ORDER

Harry B. Roberts, Jr., Member: The facts pertinent to
this decision, as admitted by all parties are as follows:

1. The Petitioners filed their personal income tax
return on May 18, 1978.
2. The Petitioners were notified by a Notice dated
June 24, 1978 of a deficiency in taxes, which deficiency was
paid by Petitioners on or about August 1, 1978.
3. The Petitioners were notified by a Notice dated
September 16, 1978 that a penalty in the amount of \$42.41 was due
on the tax paid along with interest in the amount of \$4.24 for
a total additional liability of \$46.65.

It is from the Notice of interest and penalty imposed that the Petitioners appealed to this Board. The law applicable to this case is Title 30, Delaware Code, as amended, Section 1194(a), which reads as follows:

". . .In case of failure to file any return required under this chapter on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount required to be shown as tax on such return 10% of the amount of such tax if the failure is not for more than 1 month, with an additional 10% for each additional month, or fraction thereof, during which such failure continues, not exceeding 50% in the aggregate. For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return."

Section 1193 provides for interest on the taxes due at the rate of 1% per month.

It is interesting to note that both Section 1193 and Section 1194 of Title 30, Delaware Code make the assessments of interest and penalties mandatory except that for reasonable cause shown, the penalty may be waived. There has been no reasonable cause shown by Petitioners for the late filing of their income tax return.

Therefore the Tax Appeal Board hereby affirms the
determination of the Division of Revenue.

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
CYSIC W. CAIN, JR.

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

Nettie C. Reilly
NETTIE C. REILLY

SYNOPSIS

DOCKET NO. 688

TAX SEGMENT: PERSONAL INCOME TAX
 Penalties and Interest

ISSUE: Petitioners filed their personal income taxes
 late.

 Penalties and interest were assessed. Taxpayer
 appealed the penalty and interest.

TAB DECISION: No reasonable cause was shown by the petitioners
 for the late filing of their income tax return. Therefore,
 the Tax Appeal Board affirmed the determination of the
 Division of Revenue.

DECISION: For Respondent

DECISION DATE: June 8, 1979