

Prior to 1977 Petitioner had filed his return each year at approximately the same time past the due date for filing and in each of said years Petitioner was due a refund; therefore, a late filing penalty was never assessed.

Petitioner says that he deliberately put off the filing of his Delaware taxes until August, September, sometimes as late as October, with the idea that when that money came in, he would use it for his Christmas shopping.

Petitioner further states that he has been a good law-abiding citizen and resident of Delaware with a good income tax record and feels that an injustice has been done in assessing the penalty with accrued interest. Furthermore, he says that the State of Delaware has in past years enjoyed the interest-free use of his refund extending up into as late as August and September in such years.

The Board, of course, is very aware of late filing penalty assessments assessed by the Division of Revenue, and the Board is always sympathetic to taxpayers who find themselves in this particular situation. Each case is judged on its individual merits and the Board tries to be very understanding.

The facts as presented in this case, however, are not cases of hardship but instead ones of convenience. Convenience in the sense that the taxpayer can leave his money with the state, interest-free, and have it paid out in time for Christmas; time for Christmas shopping.

We therefore, have to rule in favor of the Respondent in using its right in making the late penalty assessment.

The other dispute in this case is whether the penalty was assessed fairly.

House Bill No. 350, 129th General Assembly, approved May 16, 1978, (Chapter 281, Vol. 61, Laws of Delaware), amends Section 1194(a), Title 30, Delaware Code, relating to penalty for failure to file individual income tax returns.

This amendment increases the penalty from previous 5% to 10% per month, up to a maximum penalty of 50% of the amount of tax due and it shall apply to returns filed after May 16, 1978, the effective date of the amendment. Division of Revenue Tax Ruling 78-4, June 6, 1978.

The Board is not in dispute with the Division's interpretation of House Bill No. 350 and agrees that it was assessed fairly.

The Petition, therefore, is denied in its entirety.

IT IS SO ORDERED.

James J. York
James C. Shoff
Nettie L. Kelly
Aggie W. Cairns
Harry B. Roberts

Dated: April 10, 1981

SYNOPSIS

DOCKET NO. 706

TAX SEGMENT: PERSONAL INCOME TAX

ISSUE: Taxpayer filed his 1977 Delaware Individual Income Tax Return on September 14, 1978. Penalty and interest were assessed pursuant to the provisions of § 1194 (a) as amended by House Bill 350 approved by the General Assembly on May 16, 1978.

 Taxpayer filed an Appeal with the Board that penalty and interest were unfairly assessed.

TAB DECISION: The Tax Appeal Board held that it could not dispute the interpretation of the Division of Revenue in the assessment of penalty and interest pursuant to House Bill 350 which amended § 1194 (a) relating to failure to file individual income tax returns and agreed that penalty and interest were fairly assessed.

DECISION: For Respondent

DECISION DATE: April 10, 1981