

TAX APPEAL BOARD OF THE STATE OF DELAWARE

THE ESTATE OF CARMEL LEROY
COLLINS, DOROTHY L. COLLINS,
Executrix and LEROY J.
COLLINS, Executor,

Petitioners,

v.

DIRECTOR OF REVENUE,

Respondent.

Docket No. 714

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

David W. Baker, Esquire for Petitioners
John P. Fedele, Esquire, Deputy Attorney General for Respondent.

DECISION AND ORDER

Joseph S. Yucht, Esquire, Chairman: The facts in this case were stipulated by the parties and are summarized as follows:

1. Petitioners are the personal representatives of the Estate of Carmel Leroy Collins, who died on December 3, 1974.
2. On January 26, 1976, Respondent made an inheritance tax assessment against the Petitioners in the amount of \$15,264.21. The net estate, as determined by the information submitted by Petitioners was \$602,054.39. Petitioners paid the assessment in full on March 18, 1976.
3. A Certificate of Clearance was issued by Respondent on March 23, 1976.
4. In 1978 Respondent received a "Report of Estate Tax Audit Changes" from the Internal Revenue Service. The Petitioners

agreed to the changes made by the Internal Revenue Service. The changes increased the net estate from \$602,054.39 to \$1,115,486.39.

5. On December 4, 1978, based on the changes made by the Internal Revenue Service, Respondent made an assessment of additional inheritance tax in the amount of \$25,700.81. The Notice of Assessment was mailed to Petitioners on December 4, 1978.

6. The assessments and abatements report for the month of December, 1978 shows an assessment of additional tax against the Estate of Carmel Leroy Collins in the amount of \$25,700.81 (\$40,965.02 less prior payment of \$15,264.21) under the heading "Sussex County - Page One (1)." On an individual estate basis, this report shows assessments, abatements and refunds.

7. The Permanent Estate Tax Card shows that an assessment in the amount of \$25,700.81 was made against the Estate of Carmel Leroy Collins on December 4, 1978, and that an abatement in the amount of \$6,010.42 was made against the Estate of Carmel Leroy Collins on May 31, 1979.

8. The Inheritance Tax Unit posts assessment and abatements in the Inheritance and Succession Docket. The Inheritance and Succession Docket shows that additional tax in the amount of \$25,700.81 was posted effective December 4, 1978, and that tax in the amount of \$6,010.42 was abated effective May 31, 1979.

9. Respondent on March 30, 1979, notified Petitioners that the assessment had become due 30 days from December 4, 1978.

10. On April 3, 1979, Petitioners responded to Respondent by letter.

11. On April 27, 1979, Petitioners advised Respondent that

Respondent's assessment included Maryland real estate in the amount of \$107,292.00.

12. On May 30, 1979, Petitioners were notified that the December 4, 1978 assessment of tax had been reduced to \$19,690.39. Although the notice indicates that a second revised assessment was made; no second revised assessment was actually made on the books and records of the Division of Revenue. The May 30, 1979, notice simply reflects the fact that the Inheritance Tax Unit made a partial abatement of the December 4, 1978 assessment.

13. The Assessments and Abatement Report for the month of May, 1979 shows that no assessment had been made against the Estate of Carmel Leroy Collins during the month of May 1979. The Report does show that an abatement in the amount of \$6,010.42 was made against the Estate of Carmel Leroy Collins during the month of May, 1979.

These facts presented the following issues for the Board to decide:

1. Whether or not the Notice of Assessment of the Division of Revenue, dated May 30, 1979, assessing the additional sum of \$19,690.39 against Petitioners is void, since it was issued after a Certificate of Clearance?

2. Whether or not the Notice of Assessment of the Division of Revenue, dated May 30, 1979, assessing the additional sum of \$19,690.39 against Petitioners is void, since it was issued more than three years after the prior valid assessment dated January 26, 1976?

Petitionerers contend that said Notice of Assessment is void while the Respondent contends that the Notice is valid.

In answer to the first issue raised, we feel that the case of Maguigan v. Director of Revenue, Docket No. 777 is controlling. In the Maguigan case, we held that a taxpayer is under a duty to file a complete inheritance tax return, which will include all the assets that were required by law to be included therein. When an incomplete inheritance tax return is filed, taxes paid thereon, and a subsequent Certificate of Clearance is issued, the issuance of this Certificate is not a complete discharge of all liability which could accrue against the taxpayer. This is because the taxpayer did not file a complete inheritance tax return, and pay the tax thereon, prior to the issuance of the Certificate of Clearance. Accordingly, the assessment of the additional sum of \$19,690.39 by the Notice of Assessment, dated May 30, 1979 by the Division of Revenue against the Petitioners was valid.

The second issue raised is whether or not the Notice of Assessment of the Division of Revenue, dated May 30, 1979, assessing the additional sum of \$19,690.39 against Petitioners is void, since it was issued more than three years after the prior valid assessment dated January 26, 1976? Petitioners contend that said Notice of Assessment is void and the Respondent contends it is a valid assessment.

Carmel Leroy Collins, died on December 3, 1974 which is prior to January 1, 1977. Since the statutes which are pertinent to the

disposition of this case were changed on January 1, 1977, we must apply the statutes which were applicable on December 3, 1974. In addition, a review of the facts indicates that the value of the net estate for inheritance tax purposes is stated to be:

1. \$602,054.39 as of January 26, 1976.
2. \$1,115,486.39 as of the 1978 Report of Estate Tax Audit Changes.
3. \$1,008,194.39 (\$1,115,486.39 less the value of Maryland real estate included therein in the amount of \$107,292.00) as of May 30, 1979.

Based upon the above net estate figures, the Respondent made the following assessments of tax due for each of the above valuations:

- 1A. \$15,264.21 which was paid by Petitioners in full on March 18, 1976.
- 2A. Additional inheritance tax in the amount of \$25,700.81 being calculated as total tax in the amount of \$40,965.02 less the sum of \$15,264.21 paid on March 18, 1976.
- 3A. Reduction or abatement of the additional inheritance tax assessed in 2A above in the amount of \$6,010.42 effective May 30, 1979.

The statute of limitations for the assessment of additional tax is 30 Del. C. §1331(b) which provides:

"If the Department of Finance discovers, from information submitted to it or obtained in any other manner subsequent to the assessment of the inheritance tax under this chapter, that any property of any estate or any portion thereof or any taxable interest therein has not been included or has been

included in an amount substantially less than the market value of the property in any inheritance tax report filed with the Department, it may at any time within 3 years after the date of any previous assessment of tax make an assessment of tax and/or an assessment of additional tax and give notice of such assessment in the same manner as is provided by law for original assessments."

Petitioners contend that the original assessment was dated January 26, 1976 and since the last assessment was dated May 30, 1979, it was more than three years after the date of the previous assessment and thus was void. The Board is not persuaded by this argument. We interpret 30 Del. C. §1331(b) to permit Respondent to make an assessment of additional tax anytime within three years after the date of a previous assessment so long as Petitioner provided additional information pertaining to the value of the net estate. Thus when the initial assessment was made in the amount of \$15,264.21, it was subject to being increased if within three years of the date of the original assessment the Respondent makes an additional assessment based on an increase in the value of the net estate. This was done by Respondent on December 4, 1978 which is within three years of January 26, 1976. Then, when Petitioner informed Respondent that the December 4, 1978 assessment was incorrect since the net estate on which it was based included Maryland real estate, the assessment was changed on May 30, 1979, which is within three years of December 4, 1978. Each assessment was made when the Respondent made the appropriate entry on its books and records. Thus we conclude that the Notice of Assessment of the Division of Revenue, dated May 30, 1979, assessing

the additional sum of \$19,690.39 against Petitioners is valid.

SO ORDERED.

Joseph S. Yucht
Nettie C. Reilly
Walter K. Kubit
Ernie W. Cain

Dated: January ²⁵~~11~~, 1985

SYNOPSIS

Docket No. 714

TAX SEGMENT: INHERITANCE TAX -
 (Prior to Jan., 1977 Law)

ISSUE: (1) Whether or not the Notices of Assessment of the Division of Revenue dated December 4, 1978 and May 30, 1979, assessing additional taxes against Petitioners are void, since they were issued after Certificate of Clearance?

 (2) Whether or not the Notices of Assessment of the Division of Revenue dated December 4, 1978 and May 30, 1979, assessing additional taxes against Petitioners are void, since they were issued more than three years after the prior valid assessment dated January 26, 1976?

TAB DECISION: To the first issue raised the Board held the case of Maguigan v. Director of Revenue to be controlling. In the Maguigan case the Board ruled the issuance of the Certificate of Clearance does not discharge the taxpayer of all liability when an incomplete Inheritance Tax Return is filed which does not report the total assets required by law to be included thereon. Accordingly, the assessments of additional taxes by Notices of Assessment dated December 4, 1978 and May 30, 1979, by the Division of Revenue against the Petitioners are valid.

 To the second issue raised on the statute of limitations, the Board held that the Notices of Assessment to be valid and for the disposition of the case at bar, since the statute was changed in January 1, 1977, applied the statute applicable on December 3, 1974. The Board concluded that the language contained in 30 Del. C., §1331 (a) to permit Respondent to make assessment of additional taxes anytime within the three years after the date of a previous assessment. Thus, both assessments made by Respondent on December 4, 1978 and May 30, 1979, were within the three-year statute of limitations.

DECISION: For Respondent

DECISION DATE: January 25, 1985

BEFORE THE TAX APPEAL BOARD
OF THE STATE OF DELAWARE

IN RE THE ESTATE OF:	:	
CARMEL LEROY COLLINS,	:	
Et. al.,	:	
	:	
Petitioners,	:	
	:	
v.	:	Docket No. 714
	:	
DIRECTOR OF REVENUE,	:	
	:	
Respondent.	:	

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

David W. Baker, Esquire, Attorney for Petitioners
John P. Fedele, Esquire, Deputy Attorney General for Respondent

DECISION AND ORDER

James C. Eberly, Sr., Esquire, Vice-Chairman: The Board has before it for decision two motions. The Petitioners have moved the Board to enter an order directing Respondent to file an answering brief on the issues of the case. The Respondent, on the other hand has moved the Board to order that a factual hearing be held, and to schedule such a hearing relating to the facts surrounding the preparation of "Second Revised Assessment of Interitance Tax".

Prior to ruling on the motions, a brief chronology of this case is in order. The pertinent chronology is as follows:

1. Carmel Leroy Collins died on December 3, 1974.

2. Respondent calculated the inheritance tax at \$15,264.21 and sent Petitioners a Notice of Assessment for the calculated figure on January 26, 1976.

3. Petitioner paid said sum on or about March 18, 1976.

4. A Certificate of Clearance was issued by Respondent on March 23, 1976.

5. Respondent, pursuant to a "Report of Estate Tax Audit Changes", that it received from the Internal Revenue Service, made an assessment against Petitioners of \$25,700.81 (plus interest) of additional inheritance tax on December 4, 1978.

6. Respondent issued a Second Revised Assessment to Petitioners in the amount of \$19,690.39 on May 30, 1979, which Second Revised Assessment included the legend "supersedes Revised Assessment on December 4, 1978".

7. Petitioners filed their petition before this Board on June 25, 1979.

8. Respondent filed their answer with this Board on July 11, 1979, and claimed that this Board did not have jurisdiction to hear this case because the petition was not timely filed and moved to dismiss the appeal.

9. On November 14, 1980 this Board entered a unanimous order denying the Respondent's motion to dismiss, finding that the petition was timely filed; from which order no appeal was taken.

10. Thereafter, on April 9, 1981 the Petitioners filed their opening brief on the issues.

11. On January 8, 1982 the above referenced cross motions were made before the Board.

In ruling on the motions made by both sides it is pertinent to note that the facts surrounding the making of an assessment would appear to be not in issue here. What is in issue here is the timing of the making of the assessment. After due deliberation, the Board sees no prejudices to the parties in not ordering a factual hearing to ascertain the facts surrounding the making of the assessments.

THEREFORE, it is Ordered as follows:

1. The motion of the Petitioners requiring the Respondent to file an answering brief is hereby granted, and the Respondent is hereby ordered to file his answering brief on or before August 13, 1982, with a reply brief, if any to be filed on or before August 27, 1982.

2. That the motions of the Respondent to order and schedule a factual hearing is denied.

IT IS SO ORDERED on this 9th day of July, A.D. 1982.

James C. Dill
Joseph S. Yucht
Bettie C. Rulley
Harold S. Kuhn
Eric W. Cairns

BEFORE THE TAX APPEAL BOARD
OF THE STATE OF DELAWARE

IN RE THE ESTATE OF:	:	
CARMEL LEROY COLLINS,	:	
Et. al.,	:	
	:	
Petitioners,	:	
	:	
v.	:	Docket No. 714
	:	
DIRECTOR OF REVENUE,	:	
	:	
Respondent.	:	

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

David W. Baker, Esquire, Attorney for Petitioners
John P. Fedele, Esquire, Deputy Attorney General for Respondent

DECISION AND ORDER

James C. Eberly, Sr., Esquire, Vice-Chairman: The Board has before it for decision two motions. The Petitioners have moved the Board to enter an order directing Respondent to file an answering brief on the issues of the case. The Respondent, on the other hand has moved the Board to order that a factual hearing be held, and to schedule such a hearing relating to the facts surrounding the preparation of "Second Revised Assessment of Interitance Tax".

Prior to ruling on the motions, a brief chronology of this case is in order. The pertinent chronology is as follows:

1. Carmel Leroy Collins died on December 3, 1974.

2. Respondent calculated the inheritance tax at \$15,264.21 and sent Petitioners a Notice of Assessment for the calculated figure on January 26, 1976.

3. Petitioner paid said sum on or about March 18, 1976.

4. A Certificate of Clearance was issued by Respondent on March 23, 1976.

5. Respondent, pursuant to a "Report of Estate Tax Audit Changes", that it received from the Internal Revenue Service, made an assessment against Petitioners of \$25,700.81 (plus interest) of additional inheritance tax on December 4, 1978.

6. Respondent issued a Second Revised Assessment to Petitioners in the amount of \$19,690.39 on May 30, 1979, which Second Revised Assessment included the legend "supersedes Revised Assessment on December 4, 1978".

7. Petitioners filed their petition before this Board on June 25, 1979.

8. Respondent filed their answer with this Board on July 11, 1979 and claimed that this Board did not have jurisdiction to hear this case because the petition was not timely filed and moved to dismiss the appeal.

9. On November 14, 1980 this Board entered a unanimous order denying the Respondent's motion to dismiss, finding that the petition was timely filed; from which order no appeal was taken.

10. Thereafter, on April 9, 1981 the Petitioners filed their opening brief on the issues.

11. On January 8, 1982 the above referenced cross motions were made before the Board.

In ruling on the motions made by both sides it is pertinent to note that the facts surrounding the making of an assessment would appear to be not in issue here. What is in issue here is the timing of the making of the assessment. After due deliberation, the Board sees no prejudices to the parties in not ordering a factual hearing to ascertain the facts surrounding the making of the assessments.

THEREFORE, it is Ordered as follows:

1. The motion of the Petitioners requiring the Respondent to file an answering brief is hereby granted, and the Respondent is hereby ordered to file his answering brief on or before August 13, 1982, with a reply brief, if any to be filed on or before August 27, 1982.

2. That the motions of the Respondent to order and schedule a factual hearing is denied.

IT IS SO ORDERED on this 9th day of July, A.D. 1982.

James C. DeLo
Joseph S. Yucht
Patricia C. Buly
Harold K. K... ..
Cyril W. Co... ..

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TAX APPEAL BOARD

BEFORE THE TAX APPEAL BOARD

OF THE STATE OF DELAWARE

IN RE THE ESTATE OF CARMEL)
LEROY COLLINS, ET AL.,)

Petitioner,)

v.)

DIRECTOR OF REVENUE,)

Respondent.)

Docket No. 714

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

David W. Baker, Esquire for Petitioner
John P. Fedele, Esquire, Deputy Attorney General for Respondent

DECISION AND ORDER

Joseph S. Yucht, Esquire, Chairman: Petitioners are the personal representatives of the Estate of Carmel Leroy Collins, who died December 3, 1974. As a result of said death Respondent calculated that \$15,264.21 was due for inheritance tax and sent Petitioners a Notice of Assessment for said amount on January 26, 1976. Said sum was paid on or about March 18, 1976 and a Certificate of Clearance was issued by Respondent on March 23, 1976. In 1978, Respondent received a "Report of Estate Tax Audit Changes" from the Internal Revenue Service which substantially increased the taxable estate of the deceased. On December 4, 1978, Respondent made an assessment of additional tax in the amount of \$25,700.81 plus interest against Petitioners, based

the personal representative or taxable to appeal to the Tax Appeal Board from the decisions or rulings of the Secretary of Finance.) emphasis added.] Since the Respondent caused a Second Revised Assessment to be made on May 30, 1979, which was different from the Assessment made on December 4, 1978, an application to the Tax Appeal Board on June 25, 1979 from said May 30, 1979 Assessment was timely and proper.

Respondent argued that since Petitioners did not appeal the December 4, 1978 Assessment, it became final and their Appeal on June 25, 1979 was not timely. The Board was not persuaded by this argument, for if the Assessment became final 30 days after December 4, 1978 when Petitioners did not appeal, there would not have been any need to issue a Second Revised Assessment on May 30, 1979. We interpret 30 Del. C. §1332 to permit any person who is aggrieved by any determination of tax by the Department of Finance, to appeal any such determination to this Board.

Accordingly, in this case, each Notice of Assessment dated January 26, 1976, December 4, 1978 or May 30, 1979 could have been appealed to this Board if the proper petition was timely filed.

In conclusion, we hold that we do have jurisdiction to hear this Appeal since the Petitioners filed a timely Appeal with the Tax Appeal Board.

SO ORDERED

Joseph J. Gault
Thomas J. Galt
Richard C. Reilly
Cyril W. Corbin
Harold Roberts

Dated: November 14, 1980

SYNOPSIS

DOCKET NO. 714

TAX SEGMENT: INHERITANCE TAX

ISSUE: The sole question herein involved is whether or not the Appeal filed by Petitioner representatives was timely filed with the Tax Appeal Board relating to Notices of Assessment issued by the Respondent.

TAB DECISION: The Tax Appeal Board held that in this case each Notice of Assessment dated January 26, 1976, December 4, 1978 or May 30, 1979 could have been appealed. The Board, therefore, concluded that an Appeal was timely filed and that the Board had jurisdiction to hear the case.

DECISION: For Petitioner

DECISION DATE: November 14, 1980