

THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

AARON WILSON, JR., and)
SALLIE J. WILSON,)
)
Petitioners,)
) Docket No. 746
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

Michael P. Maguire, Esquire for Petitioners
John R. Ferrick, Esquire, Assistant Attorney General for Respondent

DECISION AND ORDER

Joseph S. Yucht, Esquire, Chairman: The facts pertinent to this decision were stipulated to by the parties and are as follows:

1. The Petitioners are Aaron and Sallie J. Wilson, husband and wife, with residence at 25 E. Parkway Avenue, Chester, Pennsylvania 19013.

2. Aaron Wilson, Jr., has a B.S. Degree from Cheney State College, Masters Degree from Trenton State College, Doctorate Degree from Nova University, Post-Graduate Degree from Temple University and the University of Delaware. He is currently employed as the Director of Vocational, Tehnical, Industrial Arts and Adult Education at Chester Upland School District in Chester, Pennsylvania.

3. Sallie J. Wilson has a B.S. Degree from Cheney State College, Masters Degree from Rutgers University and is currently working on a Doctorate Degree from Temple University. She is

currently employed as the Director of Home Economics at Cheney State College.

4. Prior to 1973, both Petitioners both lived and were employed in Pennsylvania, and paid Pennsylvania income tax.

5. In 1973, Petitioners moved to Delaware, but continued to work in Pennsylvania. Accordingly, their Pennsylvania employer continued to withhold Pennsylvania income tax.

6. During the calendar years 1974 through 1978, Petitioners continued to live in Delaware, work in Pennsylvania, and to have Pennsylvania income taxes withheld by their employers.

7. For the calendar years 1974 through 1978, Petitioners prepared and filed their own Federal income tax returns.

8. For the calendar years 1974 through 1978, Petitioners prepared and filed their own Pennsylvania tax returns as non-residents.

9. For the calendar years 1974 through 1978, Petitioners neither prepared nor filed any Delaware income tax returns.

10. During the calendar years 1974 through 1978, Petitioners resided in Delaware, were registered to vote in Delaware, had Delaware drivers licenses, had their motor vehicles registered in Delaware, and utilized the Delaware Court System for adoption proceedings. As such, both Petitioners were domiciled within this state of Delaware during the entire period.

11. Petitioners were at no time during 1973 through 1978 notified by their employers or by either the Pennsylvania or Delaware Division of Revenue that they had an obligation to file and pay Delaware income taxes.

12. Petitioners at no time during 1973 through 1978 contacted the Delaware Division of Revenue to determine whether they had an

obligation to file and pay Delaware income taxes.

13. Petitioners merely believed that since their place of employment was in Pennsylvania that their tax liability was to Pennsylvania and not Delaware.

As a result of the foregoing, the Respondent on May 1, 1980 recomputed Petitioners' personal income tax liability for the years indicated as follows:

A. For the year 1974:

1. Tax -	\$1,592.36
2. Penalty -	398.09
3. Interest -	<u>1,052.13</u>
Total	\$3,042.58

B. For the year 1975:

1. Tax -	\$1,652.49
2. Penalty -	413.12
3. Interest -	<u>881.36</u>
Total	\$2,946.97

C. For the year 1976:

1. Tax -	\$1,346.81
2. Penalty -	336.70
3. Interest -	<u>546.76</u>
Total	\$2,230.27

D. For the year 1977:

1. Tax -	\$1,141.00
2. Penalty -	570.50
3. Interest -	<u>335.43</u>
Total	\$2,046.93

E. For the year 1978:

1. Tax -	\$1,240.98
2. Penalty -	620.49
3. Interest -	<u>206.73</u>
Total	\$2,068.20

The Petitioners disagreed with the assessments made by the Respondent and appealed to this Board.

The Petitioners' contentions are that (1) the Statute of

Limitations has run on the Respondent's claim for taxes for the years 1974, 1975 and 1976 and (2) the Petitioners' conduct was such that no penalties of any kind whatsoever should be imposed upon them. The Respondent's position is that (3) the Petitioners are subject to the assesement made for the years 1974, 1975 and 1976 since they did not file any tax returns for said years and (4) the penalty provisions of 30 Del. C. §1194(a) are applicable to Petitioners since they were unable to prove that their failure to file the returns was due to reasonable cause and not due to wilful neglect. We agree with the Respondent on each contention.

The applicable portions of 30 Del. C. §1191 provides as follows:

"(a) Except as otherwise provided in this Chapter, a notice of a proposed deficiency assessment shall be mailed to the taxpayer within 3 years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the 3 year period, or the period otherwise fixed.

(b) If no return is filed, or a false and fraudulent return is filed, with intent to evade the tax imposed by this Chapter, a notice of deficiency may be mailed to the taxpayer at any time."

Petitioners construe subparagraph (b) to read that the mere non-filing of a tax return, without showing an intent to evade is not sufficient to extend that Statute of Limitations beyond the three year period for collection as stated in subparagraph (a). This interpretation would require the Respondent to be put on notice of other tax returns filed in other states or with the Internal Revenue Service merely because said taxpayer filed said other returns. The statute is clear and unambiguous on its face.

Subparagraph (b) clearly extends the time Respondent has to mail a notice of deficiency to a taxpayer beyond the 3 year limit in subparagraph (a) in two (2) cases, as follows:

1. When no return is filed, and
2. When a false and fraudulent return is filed, with intent to evade the tax imposed.

The phrase "with intent to evade the tax imposed" only modifies the phrase "when a false and fraudulent return is filed" and does not modify the phrase "If no return is filed". Therefore, the notices of deficiency mailed by Respondent to Petitioners were timely and are not barred by the 3 year period of 30 Del. C. §1191(a).

Petitioners' second argument is that no penalties of any kind should be assessed against them pursuant to 30 Del. C. §1194(a).

The pertinent part of said statute is as follows:

"In case of failure to file any return required under this Chapter on the date prescribed therefore (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,..."

This section has been interpreted by this Board previously to mean that the assessments of interest and penalties are mandatory, except that for reasonable cause shown, the penalty is waived. Fera v. Director of Revenue, Docket No. 688, 1979. The question then becomes whether or not Petitioners have shown reasonable cause for their late filing?

The Petitioners only argument in support of their contentions

SYNOPSIS

DOCKET NO. 746

TAX SEGMENT: PERSONAL INCOME TAX

ISSUE: Taxpayers (Petitioners) failed to file Delaware tax returns for calendar years 1974 through 1978 while residents of Delaware employed in Pennsylvania. Deficiency assessments were made by Respondent for said years on May 1, 1980.

Petitioners appealed on two contentions:

- (1) The three-year statute of limitations under § 1191 (a) was applicable since there had been no showing that the failure to file was with the intent to evade the tax as required under § 1191 (b).
- (2) The imposition of the penalties under 30 Del. C. § 1194 (a) should not be sustained since the Petitioners thought they were doing the right thing and had no intent to defraud or cheat.

TAB DECISION:

- (1) The Tax Appeal Board held that the words "with the intent to evade the tax" in § 1191 (b) only modifies the phrase "when a false and fraudulent return is filed" and not the phrase "If no return is filed" and accordingly, there is no limitation on assessments when no returns are filed pursuant to § 1191 (b).
- (2) The Tax Appeal Board also held that the penalties imposed under § 1194 (a) are mandatory, except for reasonable cause, and here, the Petitioners' contention that they thought they were doing the right thing and had no intent to defraud or cheat did not amount to reasonable cause.

DECISION: For Respondent

DECISION DATE: May 14, 1982

f-6-14-82
Tax Appeal Board

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TAX APPEAL BOARD

SUPERIOR COURT
OF THE
STATE OF DELAWARE

ANDREW D. CHRISTIE
JUDGE

COURT HOUSE
WILMINGTON, DELAWARE 19801

Michael P. Maguire, Esquire
1200 N. Van Buren Street
Wilmington, DE 19806

John R. Ferrick, Esquire
Division of Revenue
820 N. French Street
Wilmington, DE 19801

Re: Aaron Wilson, Jr., and Sallie J. Wilson vs.
Director of Revenue - 82A-JN-3

Submitted: December 17, 1982
Decided: December 23, 1982

Gentlemen:

Appellants, Aaron and Sallie Wilson, moved into the State of Delaware in 1973. Prior to 1973 the Wilsons both lived and worked in Pennsylvania. While domiciled in Delaware through 1978, the Wilsons were registered to vote in Delaware, had Delaware driver's licenses, had their motor vehicles registered in Delaware, and adopted a child through the Delaware court system. It is undisputed that they did not file a Delaware state income tax return for the years 1974 through 1978. They did continue to pay the Pennsylvania state income tax as non-residents, in connection with their earnings at their separate places of employment which were in Pennsylvania. The Director of Revenue discovered this failure to file and assessed taxes, interest, and penalties against them under 30 Del.C. § 1194(a) for the years 1974 through 1978. The matter was taken before the Tax Appeal Board, which decided the case in favor of the Director and this appeal followed.

Appellants argue that the statute of limitations contained in 30 Del.C. § 1191 bars an assessment of taxes against them for the years 1974, 1975, and 1976. They further argue that penalties may be imposed under 30 Del.C. § 1194(a) only if the Director proves that they failed to file returns with intent to evade the income tax.

In reviewing a decision of the Tax Appeal Board, this Court has a duty to sustain its decision if it is based on substantial evidence