

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

MR. & MRS. RUBLEE C. SOULE,)
)
 Petitioners,)
)
 v.)
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

Docket No. 774

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

Leo E. Dodd, C.P.A. for Petitioner

John P. Fedele, Deputy Attorney General for Respondent

DECISION AND ORDER

Cyric W. Cain, Jr., Member: The facts, which have been stipulated by the parties, may be summarized as follows:

1. Petitioners are individuals who reside in the State of Delaware.
2. Petitioners filed a timely Notice of Appeal from the Notice of Assessment of deficiency or liability by the Director of Revenue.
3. The facts are as follows:

On March 3, 1979, Petitioners signed a consent with Internal Revenue Service extending the limitation period upon

assessment of tax on the 1975 return to April 15, 1980.

On December 12, 1979, Petitioners signed a consent extending further the limitation period to April 15, 1981.

On August 26, 1980 the Internal Revenue Service increased Petitioners' adjusted gross income by \$2,916. Petitioners agreed to said change. Petitioners did not furnish Respondent with a copy of IRS Income Tax Audit Change Report for the following reasons:

- (a) They were not aware that they were supposed to do so and;
- (b) They believed that the statute of limitations for Delaware had expired.

On March 18, 1981 Respondent received a copy of said report from Internal Revenue Service.

On December 2, 1981 Respondent mailed a Notice of Assessment to Petitioners for the taxable year in question.

- 4. The sum of the tax in controversy is \$449.06.
- 5. No penalty was assessed.
- 6. The alleged error is that the Division of Revenue lacks jurisdiction to assess any tax here because the statute of limitations had expired on the taxable year of 1975.
- 7. The issue to be decided is whether or not the statutory period of limitations had expired prior to the Delaware assessment.

In their defense, Petitioners rely on paragraph (e) of Section 1191 for support of their argument. They contend the following:

(a) A 1975 return timely filed would expire on April 30, 1979 under Delaware statute.

(b) The only way the statute of limitation is extended is under paragraph (e) Section 1191 which states that,

"An agreement between a taxpayer and the IRS providing for the extension of the period of assessment of Federal income taxes shall constitute an agreement with the State Tax Commissioner to extend the period for assessment of income taxes under the provisions of this chapter."

(c) Petitioners say they signed two such agreements with IRS extending the expiration date first through April 15, 1980; then through April 15, 1981.

(d) Petitioners contend further that because that agreement was a valid agreement, in effect, the statute expired when the Internal Revenue return expired on April 15, 1981.

(e) Petitioners admit that they did not notify the State of the agreements as required in paragraph (e) Section 1191 because as far as Delaware is concerned,

the statute expired after the three-year period which was April 30, 1979.

(f) Petitioners admit that the state received notice of these changes from the IRS 28 days before April 15, 1981 and during that period could have assessed the tax, and say, that they had no right to assess taxes after April 15, 1981.

In deciding this case we think the taxpayer is in error for several reasons:

1. Even if the Delaware statute of limitation does apply the fact is that the taxpayer signed a consent agreement with the IRS on March 3, 1979 extending the expiration date to April 15, 1980 and did not forward a copy of said consent agreement to the Secretary of Finance as required under paragraph (e) Section 1191 since he says he relied on that paragraph. In fact, he has not done so to date.

2. Under Section 1176 the taxpayer is given the obligations to report a change as we see it. Apparently, there is a reason for this statute to be in the books. Section 1176 states that if the amount of a taxpayer's federal tax liability reported on his

federal income tax return for any taxable year is changed or corrected by the IRS the taxpayer shall report to the State Tax Department such change or correction in federal tax liability within 90 days after the final determination.....

3. Finally, we think that our tax system is a voluntary one and that there are only two ways the State of Delaware would even know that a taxpayer owed additional monies to the Federal. One is if the taxpayer supplies a copy of the Federal Audit Report to the Division of Revenue or two, a copy of the report is mailed to the Division of Revenue by the IRS.

For the foregoing interpretation we hereby affirm the determination of the Respondent.

IT IS SO ORDERED.

DATE: *March 11, 1983*

W. W. Cain
W. W. Cain
Nettie C. Reilly
Jan C. Paul
Jeff Galt

SYNOPSIS

DOCKET NO. 774

TAX SEGMENT: PERSONAL INCOME TAX

ISSUE: Whether or not the statutory period of limitations had expired prior to the Delaware assessment of personal income taxes for 1975 taxable year.

TAB DECISION: The Tax Appeal Board held that the State of Delaware is not bound by the statute of limitations when taxpayers have signed consent agreement with IRS for extension of assessment of Federal taxes pursuant to Section 1191 (e). Furthermore, Section 1176 gives obligation to taxpayers to report to the Secretary of Finance any change or correction made by IRS for any taxable year within 30 days after the final determination of such change or correction.

DECISION: For Respondent

DATE OF DECISION: March 11, 1983