

TAX APPEAL BOARD OF THE STATE OF DELAWARE

KEN HOUSER, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 780  
 )  
 DIRECTOR OF REVENUE, )  
 )  
 Defendant. )

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

Ken House~~r~~, pro se

John R. Ferrick, Esquire, Deputy Attorney General for Respondent

DECISION AND ORDER

Joseph S. Yucht, Esquire, Chairman: The Board has before it Respondent's Motion to Dismiss the Amended Petition filed by Petitioner. Upon consideration of the pleadings filed and the contentions of the parties at oral argument, it appears to the Board that:

(1) Petitioner filed his Petition on June 16, 1982 which stated, inter alia, as follows:

- a. The Petitioner is an individual with residence at 169 W. Netherfield Road, Wilmington, DE 19804.
- b. The notice of assessment was mailed to the Petitioner on March 22, 1982.
- c. The taxes in controversy are income taxes for the calendar year 1973, 1974, 1975, 1976 and 1977 for a total of "10,351.81".

d. The determination of tax set forth in said notice of assessment is based upon the following errors:

1. "TO BE AMENDED IN 60 days."

e. The facts upon which the Petitioner relies as the basis of this proceeding are as follows:

1. "TO BE AMENDED IN 60 days."

f. The Petitioner prayed that this Board may hear the proceedings and abate the aforesaid assessment and grant such other relief as may be just and proper.

g. The Petition was not signed by the Petitioner, but his name was typed in on the signature line.

h. Two names were signed to the Petition although there was no explanation on the Petition as to why they were there.

i. No notices of assessments were attached to the Petition.

(2) Respondent filed an Answer on July 6, 1982 which contained an affirmative defense alleging that the Petition does not comply with Rule 6 of the Rules of the Tax Appeal Board and then stated with specificity the manner in which the Petition violated said Rule.

(3) Petitioner filed an Amended Petition on August 10, 1982, which, inter alia, set forth the facts upon which the Petitioner relies as the basis for the proceeding and also set forth the alleged errors made by Respondent in determining the amounts due in the notices of assessments. Petitioner also attached a copy of the notice of assessment for taxable year

1973 and the Division of Revenue audit report for said year to the Amended Petition.

(4) Then on August 24, 1982 Respondent filed his motion to dismiss the Amended Petition. The Board scheduled a hearing on the motion for October 8, 1982.

(5) During the hearing on the motion on October 8, 1982, Petitioner contended that he had an Order from the Board granting him an extension of time to file the Amended Petition. Since the Board had no such documentation in its file, it granted Petitioner 7 days in which to file copies of any such documentation he had which granted him the alleged extension of time. A continuance of the hearing until November 12, 1982 was granted.

(6) By letter dated October 10, 1982, which was received by the Board on October 13, 1982, Petitioner informed the Board of his "documentation" as follows:

"Due to an error of my own, I find that I did not send Petition to the Tax Appeal Board, and only one (1) copy of Petition to Division of Revenue.

As Pro Se and not an attorney, I hope you will be lenient in this matter and show no prejudice against a Pro Se."

(7) During the continued hearing on November 12, 1982, Petitioner admitted that the Board did not grant him any extension, but since his Petition was filed timely, he contended it was valid as amended. The Respondent contended that since the Petitioner had not strictly complied with the Board's Rules, the Amended Petition must be dismissed.

(8) This Board has traditionally insisted that the parties

comply strictly with the rules governing proceedings before it. However, in the instant case, we are constrained and feel obliged to rule in favor of the Petitioner. The original Petition, although not complete, did contain sufficient information to put the Respondent on notice that the Petitioner was challenging the notices of assessment that were filed against him. (See Miller v. Master Home Builders, Inc., Del. Super., 239 A2d 696 and cases cited therein where the Courts have permitted amendments to cure defects in pleadings. These amendments are now being permitted in areas that the Courts previously would not permit to be amended. See also Deluca v. Martelli, Del. Super., 200 A2d 825 wherein Judge Christie permitted a pleading to be amended "when justice so requires".) Although we reiterate that compliance with the Board's Rules of Procedure is of the utmost importance and necessity, in the interests of fairness and justice, we think that the Respondent's Motion to Dismiss must be denied.

(9) This Order is meant to serve notice on the public that in the future we will strictly enforce compliance of our Rules. In addition, this decision is limited to this case and is not to be cited as precedence for any other case.

NOW, THEREFORE, IT IS ORDERED that the Respondent's Motion to Dismiss the Amended Petition is denied and Respondent is granted leave to file an Answer to the Amended Petition within

twenty (20) days of the date of this Order.

Joseph S. Yucht  
James C. Eberly, Sr.  
Arthur W. Carney

Dated: December 10, 1982

(James C. Eberly, Sr., Esquire, Vice-Chairman, disagreed with this decision.)