



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

"Addition".

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

"Ameded Petition to follow".

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 signed and Petitioner's address was stated.

h. No notice of assessment was attached to the Petition even though Petitioner alleged that it was attached.

(2) Respondent filed an Answer on March 31, 1983 which contained an affirmative defense alleging that the Petition was not timely filed and does not comply with Rule 6 of the Rules of the Tax Appeal Board.

(3) The Board held a pre-trial conference on May 13, 1983 at which time the aforesaid pleadings were reviewed. Petitioner stated that he did not understand the affirmative defense and it was explained to him. Petitioner said he did not have a copy of the Board's Rules and a copy of the Rules and Appendix was given him. Respondent stated that a Motion to Dismiss the Petition would be filed stating with specificity the manner in which the Petition violated Rule 6 and why it was not timely filed. The Board told Petitioner he would have 30 days to respond to the Motion and if he needed more time to respond, he should make an application to the Board.

(4) On June 10, 1983 Respondent filed a Motion to Dismiss alleging, inter alia, the following:

a. The document (Petition) did not contain a copy of the assessment as it recited, thus violating Rule 6 of the Board.

b. The Notices of Assessment were mailed to Petitioner at his address stated in the Petition on November 11, 1982, and thus the Petition was not timely filed with the Board.

c. In support of the contentions that the Notices of Assessment were mailed on November 11, 1982, Respondent filed affidavits of Jaqueline Zesterer and Ophelia Gaines.

(5) The Board scheduled a hearing for September 13, 1983 to consider the Motion to Dismiss, Petitioner stated that he did not receive a notice of the hearing and did not attend. The Board directed its Secretary to reschedule the hearing on the Motion for its October hearing and directed that the Notice of the hearing be sent to Petitioner by certified mail, return receipt requested.

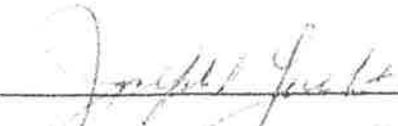
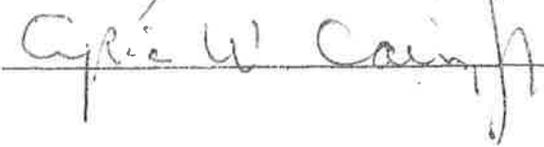
(6) On October 21, 1983 the Board held its hearing on Respondent's Motion to Dismiss. Petitioner did not file any response to the Motion. Respondent contended that the Notices of Assessment were mailed to Petitioner on November 11, 1982 and that the Petitioner then had a total of 90 days in which to file his appeal to the Board. Since he filed his appeal on March 15, 1983, that was more than 90 days and the Board did not have jurisdiction. The 90 day period expired on February 9, 1983. Also, since no Notices of Assessment were attached to the Petition as required by Rule 6, the Petition was not a valid one since it did not comply with said Rule.

(7) The Petitioner's only response was that he could not afford a lawyer and he had nothing to add.

(8) The Board finds that the Notices of Assessment from which Petitioner attempted to appeal were mailed to him on November 11, 1982, and that Petitioner did file his appeal with the Board on March 15, 1983. Thus he did not file his appeal in accordance with the provisions of 30 Del. C. §1203 which requires appeals to be filed within 90 days from the date of the mailing of the Notice. Thus the Board does not have jurisdiction over the matter.

(9) The Board also finds that Petitioner has not complied with Rule 6 of the Tax Appeal Board in that his Petition did not have a copy of the Notices of Assessment from the Director of Revenue attached to his Petition. As a result of this deficiency, no proper or valid or sufficient Petition was filed.

NOW THEREFORE, IT IS ORDERED that Respondent's Motion to Dismiss is granted and the Petition is hereby dismissed.

  
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Dated: November 18, 1983