

TAX APPEAL BOARD OF THE STATE OF DELAWARE

RAY G. DICKINSON,  
Petitioner,

v.

DIRECTOR OF REVENUE,  
Respondent.

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Docket No. 834

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

Ray G. Dickinson, pro se

Joseph Patrick Hurley, Jr., 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 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 and his wife, Patricia G. Dickinson, filed their petition with the Division of Revenue which was received on January 16, 1985 and turned over to the Tax Appeal Board which received it on January 17, 1985. This petition alleged the following:

a. The Petitioners are husband and wife with residence at 506 Shue Drive, Newark, Delaware 19713.

b. The Notice of Assessment (a copy of which is attached and marked Exhibit A) was mailed to the Petitioners on approximately October 12, 1984.

c. The taxes in controversy are income taxes

for the calendar year 1982 for \$1,237.93 which has already been paid.

d. The facts upon which the Petitioners rely as the basis for this proceeding are that they are protesting the alleged charges of 100% fraud and 50% failure to file penalty assessed against their 1982 Delaware Individual Tax Return. They also protested the interest charges accrued during the period from May 1, 1983 to October 31, 1984 on the grounds that Petitioners should have been notified in May of 1983 that the State of Delaware had not received their tax returns for that year.

(2) Respondent filed an answer on January 28, 1985 which basically set forth a general denial that there was error committed in the Notice of Assessment. On the same date Respondent also filed a Motion to Dismiss which basically set forth an affirmative defense alleging that the Petition was not filed timely in that more than ninety (90) days had elapsed between the mailing of the Notice of Assessment on October 12, 1984, and the filing of the Petition with the Tax Appeal Board. Respondent also alleged that the Notice of Assessment was not attached to the Petition as required by Tax Appeal Board Rule No. 6.

(3) The Board held a pre-trial conference on May 8, 1985 which was attended by the Petitioners and the Deputy Attorney General representing the Respondent. Since the Respondent had filed a Motion to Dismiss which alleges lack of jurisdiction, the Board scheduled a factual hearing to determine the jurisdictional question to be held on April 12, 1985.

(4) On April 12, 1985 a factual hearing on the Motion to Dismiss was heard by the Board. Petitioners did not file any response to the Motion. Respondent contended that the Notice of Assessment

was mailed to Petitioner on October 12, 1984 and that the Petitioner then had a total of ninety (90) days in which to file the appeal to the Board. The Petition was received on January 16, 1985 by the Division of Revenue and on January 17, 1985 by the Tax Appeal Board. The Respondent contended that both of these dates were more than ninety (90) days from the date the Notice of Assessment was mailed and thus the Petition was not filed timely. Respondent further argued that the Notice of Assessment was not attached to the Petition as required by Rule No. 6 and thus the Petition was not a valid one since it did not comply with said Rule.

(5) The Petitioners' only response was that they felt the Petition was timely filed since they felt that they mailed their Petition on January 14, 1985 and thus it would have been timely filed. They further indicated that they had extenuating circumstances between October of 1984 and January, 1985 which caused Mr. Dickinson to be out of town. He further indicated that there was sickness in the family but he did not think that the sickness would excuse any late filing.

(6) The Board finds that the Notice of Assessment from which Petitioner had attempted to appeal was mailed to them on October 12, 1984 and that Petitioner did file the appeal with the Board on January 17, 1985. The Board further finds that if the Petition was actually filed with the Board on January 16, 1985 then the Board would still reach the same conclusion since the Petitioner did not file the appeal in accordance with the provisions of 30 Del. C. §1203 which requires appeals to be filed within ninety (90) days from the date of the mailing of the Notice. Thus the Board does not have

jurisdiction over the matter.

(7) The Board also finds that Petitioner has not complied with Rule No. 6 of the Tax Appeal Board in that the Petition did not have a copy of the Notice of Assessment from the Director of Revenue attached to the Petition. (The document attached to the Petition by the Petitioner and marked Exhibit A was an Audit Report and Agreement to Assessment and not a Notice of Assessment.) 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.

Joseph J. [unclear]  
Arthur A. Lilly  
John W. [unclear]  
Walter B. [unclear]

Dated: June 14, 1985