

on March 24, 1980 the assessment of tax and interest made on January 4, 1980.

8. A conference on the protest was scheduled for April 16, 1980.

9. The conference of April 16, 1980 was never held.

10. Petitioner responded on April 16, 1980, by letter indicating as to tax year 1977 that he had not requested an oral hearing and that the Division of Revenue's request for a meeting was not in compliance with administrative procedure.

11. The account was assigned for collection to Revenue Officer Charles J. Leone.

12. The account was put into a "hold" status as a result of the protest letter filed by Petitioner on March 24, 1980.

13. Based upon recollection and belief shortly before August 14, 1981, Mr. Leone inquired of Philip Berger, Assistant Director of Records and Enforcement, to the status of the matter.

14. This contact was generated by an inventory review of files assigned to Charles J. Leone.

15. A second conference was scheduled for August 24, 1981, by the Division of Revenue.

16. The Petitioner by letter of August 17, 1981, indicated that a conference would not be in compliance with administrative procedure and thus not proper and further requested abatement of the assessment for failure to issue a notice of determination under 30 Del. C. §1184 and for delay.

17. Shortly before September 16, 1983, Mr. Leone again as a result of an inventory review of files assigned contacted Mr. Berger regarding the status of the matter.

18. As a result of notice and demand dated September 16, 1983, a judgment was entered covering tax year 1977 on October 18, 1983.

19. Notice of this judgment was given on October 21, 1983.

20. The Division of Revenue believes that a notice of determination was sent to taxpayer as to his protest for tax year 1977 but after a search of the records, no documentation of that fact can be found.

21. Based upon the failure to be able to document compliance with the statutory requirements for obtaining a judgment; the Division of Revenue concludes that the judgment as it relates to tax year 1977 and the interest thereon is invalid.

22. On February 27, 1985, in a proceeding before the Superior Court per Judge Taylor held that the Division of Revenue was not barred from issuing a notice of determination for tax year 1977.

23. On March 13, 1985, Petitioner was mailed a notice of determination after protest.

24. On June 7, 1985, Petitioner timely filed a Petition with the Tax Appeal Board.

25. The word "income" is not defined in the Revenue Code of Delaware.

26. The word "income" is not defined in 26 U.S.C.

Internal Revenue Code.

Petitioner contends that he is under no duty to pay Delaware Income Tax on the wages received from Capital International Airways. Petitioner offers six separate arguments to support that position, summarized as follows:

1. The Division of Revenue lacks jurisdiction because of failure to prove that petitioner is a taxpayer with income.
2. Petitioner's duty to pay taxes is voluntary since the Statute states that a return "shall" be filed, not that it "must" be filed.
3. The Division of Revenue cannot define the word "income".
4. The Petitioner is a "non-taxpayer" and thus not subject to tax.
5. That taxation unduly interferes with the guaranteed right to earn a living.

It is the Opinion of the Board that all the above arguments are frivolous and without merit. We reject these arguments out of hand and note simply that these and many other "tax protester" type arguments have been consistently found to be unconvincing by Courts at all levels, and on numerous occasions.

Petitioner's sixth argument is worthy of consideration and is summarized as follows:

6. An income tax is an excise tax. The Delaware

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

WILLIAM M. SLATER

v.

STATE OF DELAWARE

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Docket No. 842

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TAX APPEAL BOARD

STIPULATION OF FACTS

NOW COME the parties in the above-captioned cause of action, by their representatives, and hereby stipulate and agree as follows:

1. In 1977 Petitioner was employed by Capitol International Airways and received wages in exchange for labor.
2. Petitioner filed a timely 1977 Delaware state tax return because at the time he believed he was required to do so.
3. Petitioner did not report any of the wages paid by Capital International Airways as income. See Exhibit A.
4. The Division of Revenue, pursuant to §1181 (B) estimated the Petitioner's wages to be \$27,434.40 for tax year 1977. See Exhibit B attached.
5. Petitioner agrees that his wages for tax year 1977 were \$27,434.40.
6. On January 4, 1980, Petitioner was mailed a notice of assessment for tax year 1977.
7. Petitioner protested to the Division of Revenue on March 24, 1980 the assessment of tax and interest made on January 4, 1980.
8. A conference on the protest was scheduled for April 16, 1980.
9. The conference of April 16, 1980, was never held.
10. Petitioner responded on April 16, 1980, by letter indicating as to tax year 1977 that he had not requested an oral hearing and that

TAX APPEAL BOARD OF THE STATE OF DELAWARE

WILLIAM M. SLATER, :
Petitioner, :
v. : Docket No. 842
DIRECTOR OF REVENUE, :
Respondent. :

Before: Joseph S. Yucht, Esquire, Chairman; John Cordrey,
Esquire, Vice Chairman; Harry B. Roberts, Jr., Regina
C. Dudzic, and David C. Epps, C.P.A., Members.

William M. Slater, pro se

Joseph Patrick Hurley, Jr., Esquire, Deputy Attorney General for
Respondent

DECISION AND ORDER

Joseph S. Yucht, Esquire, Chairman: On July 11, 1986 the Tax Appeal Board (hereinafter "Board") issued its Decision and Order after considering the appeal filed by Petitioner of a notice of determination made by Respondent against Petitioner. The then secretary of the Board, by letter dated July 16, 1986, mailed a copy of the Decision and Order to Petitioner and Respondent. Petitioner did not receive his copy of the Decision and Order until August 20, 1986, which is a date after the time for taking an appeal of the Decision and Order had elapsed.

By letter dated August 21, 1986, Petitioner notified the Board of the above fact. This letter was considered as a Motion for Rehearing and Reargument pursuant to Rule 21 of the Board.

The Board has reviewed its Decision and Order dated July 11, 1986 and finds that there was no error in that Decision and we