

Original ✓

TAX APPEAL BOARD OF THE STATE OF DELAWARE

ROBERT D. AND RUTH F. ECKSTINE	)	
Petitioners,	)	
	)	
v.	)	Docket No. 915
	)	
DIRECTOR OF REVENUE,	)	
Respondent.	)	

Before: Joseph S. Yucht, Esquire, Chairman; John H. Cordrey, Esquire, Vice Chairman; Harry B. Roberts, Regina Dudzic, and David C. Eppes, Members.

Petitioners: Pro se

Respondent: Amanda S. Krasinski, Esquire, Deputy Attorney General.

FACTS OF THE CASE

The parties were unable to stipulate to any facts in this case. We have attempted to summarize the facts as follows:

During the years in question Petitioner was a resident of the State of Maryland. In May 1985, petitioner filed non-resident Delaware income tax returns for years 1977 through 1982. In each of these years, there were Delaware source wages and Delaware withholdings reported. In all years except 1980, the withholdings equalled or exceeded the computed tax liability. In 1980, the computed tax liability exceeded the withholdings by a small amount. In June 1985, the Respondent issued a Notice of Assessment for the balance due for 1980, plus interest and penalties. In October 1985, Respondent issued a Notice of Determination to the petitioner indicating that, in the opinion of the Respondent, the Notice of Assessment was correct and that the computed liability for 1980 was due and payable.

Petitioner then petitioned this Board for relief citing the following arguments:

- 1) That the Division of Revenue failed to respond satisfactorily to Petitioners communications.
- 2) That the computed overpayments for tax years 1977 and 1978 should be applied to the 1980 liability.
- 3) That the taxpayer had incurred business losses allocable to Delaware which would offset the reported wage income resulting in no tax liability.

Respondent argued these points as follows:

- 1) With respect to the claim that the Division of Revenue did not adequately respond to Petitioners communications, Respondent argued that this was irrelevant to the current proceedings.

2) With respect to the application of the 1977 and 1978 overpayments, Respondent argued that the statute of limitations had expired on these years thus barring recovery or application of refunds or credits.

3) With respect to the purported business losses, Respondent argued that no evidence had been presented to properly establish business losses allocable to the State of Delaware.

#### DISCUSSION

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First, the Board agrees with the Respondent that any allegations regarding failure to communicate or cooperate with the Petitioner are irrelevant to the case at hand. The Division of Revenue is not required to enter into settlement negotiations with taxpayers.

Second, we agree that the refunds due for 1977 and 1978 are not available to the Petitioner. Petitioner failed to timely file tax returns for these years. 30 Del. C. Sec. 1198 and 1200 clearly state that any recovery of these amounts is time barred. The fact that there is a balance due in another year does not negate the clear meaning of the statute.

Third, at the hearing conducted before this Board, Petitioner was offered the opportunity to present evidence related to his business losses and their allocability to Delaware. Petitioner has failed to present any credible evidence supporting his position. No workpapers or other documents supporting Petitioner's contention were submitted at any time during the conduct of this case.

#### DECISION AND ORDER

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For the reasons cited above, the Board is compelled to find for Respondent. Therefore, the decision of Director of Revenue is affirmed.

IT IS SO ORDERED THIS 18th day of November, 1988.

Joseph S. Yucht  
John H. Cordray  
Regina C. Rudzinski  
Paul L. [Signature]  
Mary B. Keady