

TAX APPEAL BOARD OF THE STATE OF DELAWARE

DONALD P. AND JANE M. STROUP, )

Petitioners, )

v. )

DIRECTOR OF REVENUE, )

Respondent. )

DOCKET NO. 922

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

Donald P. Stroup, Pro Se.

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

DECISION AND ORDER

DAVID C. EPPES, MEMBER. The issue before the Board in this case was whether Petitioners filed Delaware state income tax returns for years 1980 and 1981. The Board, in its opinion dated February 8, 1991, concluded that Petitioners had filed the returns and paid the applicable taxes and reversed the assessment against the Petitioners. Respondent appealed to the Superior Court of the State of Delaware. In an opinion dated September 18, 1991, the Superior Court reversed the decision of the Board and remanded the case for further proceedings. The Superior Court noted the following deficiencies in the Board's opinion:

- 1) The Board may have placed some reliance on a letter provided by H&R Block, even though such evidence was inadmissible.
- 2) The Board accepted Petitioners' arguments that he could not obtain copies of cancelled checks because the banks only kept the records for three years. However, federal law requires banks to keep these records for five years.

- 3) There was no evidence provided that Petitioners tried to contact each of the three banks they dealt with.
- 4) The Board relied upon Petitioners' statements that they checked with the banks. There was no supporting evidence.
- 5) The Board relied on Petitioners' statements as to the banks response, which was hearsay evidence and thus impermissible.
- 6) The Board misplaced the burden of proof with regard to filing of tax returns, which in effect shifted the burden of proof to the Director of Revenue. No envelope, mail receipt or other document was placed into evidence that would support Petitioners' contention that they filed the returns.
- 7) The Board erred in accepting the argument that the Division of Revenue would not have issued refunds to petitioners for tax years 1982 and 1983 if taxes were due for 1980 and 1981. The inference drawn by the Board was too great.
- 8) Since the Board misconceived and misapplied the requisite burden of proof, Petitioners must be afforded the opportunity to present any additional evidence.

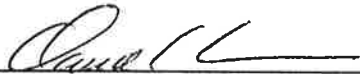
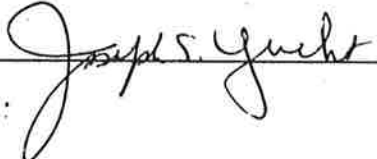
In response to the Superior Court decision, Respondent propounded a Motion for Summary Judgment on the grounds that no additional evidence was available that would meet the burden of proof as described in the Superior Court decision. It also propounded its "First Request for Admissions" giving Petitioners the opportunity to put on the record any new evidence they might be able to produce. Petitioners responded that they would produce, or attempt to produce additional evidence. Petitioners stated that they would have the H&R Block manager appear to give testimony and that additional efforts had been made to get information from the banks and from taxing authorities

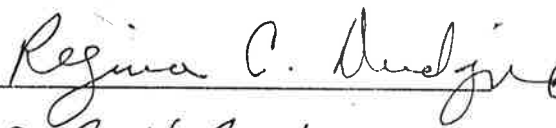

in other states. In its letter memorandum, and in oral argument before the Board, Respondent argued that any new evidence being offered by Petitioners would still fail to meet the burden of proof. Upon questioning by members of the Board, Petitioners admitted that it would not be able to present any further evidence of the type and veracity required by the Superior Court decision, i.e. cancelled checks and/or proof of mailing.

The Board's initial decision was based on our belief that Petitioners were telling the truth. However, we erred in that we misplaced the burden of proof, which is clearly stated in law and supported in the judicial history. We are convinced that the Petitioners have no further evidence it can proffer to meet the burden of proof required by the Superior Court.

For the foregoing reasons, the Board finds in favor of the Respondent and grants the Motion for Summary Judgment against Petitioners.

IT IS SO ORDERED.

  
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TAX APPEAL BOARD  
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 DIRECTOR OF REVENUE, )  
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 Respondents. )

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

For Petitioner: Donald P. Stroup and Jane M. Stroup, pro se

For Respondent: Amanda Krasinski, Esquire, Deputy Attorney General

DECISION AND ORDER

Joseph S. Yucht, Esquire, Chairman:

Petitioners are husband and wife and are Delaware residents. Respondent contended that the Petitioners failed to file and pay Delaware state income tax for tax years 1980 and 1981. Petitioners contended that for tax year 1980 they paid Delaware state income tax and Pennsylvania state income tax, and that they paid Delaware state income tax, Pennsylvania and New Jersey income taxes and Philadelphia tax for tax year 1981. Petitioners paid income taxes to the other states because during that period of time they maintained an apartment in Pennsylvania and New Jersey as well as having their primary residence listed in the State of Delaware.

In 1986 the Division of Revenue checked its records against some Federal Internal Revenue Service records and concluded that Petitioners did not file nor pay Delaware state income taxes for

the years 1980 and 1981. As a result, a notice to that effect, dated October 24, 1986, was sent to Petitioners inquiring about the filing and payment of those taxes. Petitioners contended that on October 31, 1986 they mailed to Respondent copies of their 1980 and 1981 income tax returns which had been prepared by H&R Block. Subsequently, on November 13, 1986, Respondent requested that Petitioners furnish copies of their W-2 Forms for years 1980 and 1981. Petitioners replied by mailing to Respondent copies of their W-2 Forms for years 1980 and 1981.

Respondent after reviewing the documents submitted by Petitioner, issued a Notice of Assessment, dated December 5, 1986, indicating that for taxable years 1980 and 1981, the Petitioners owed \$1,370.00 in taxes, \$825.88 in interest, \$1,027.50 in penalties, making a total assessment of \$3,223.38. The basis for this assessment was apparently that Respondent could not find in its records where Petitioners had filed and/or paid Delaware income taxes for 1980 and/or 1981 and assessed the taxes, interest and a penalty against Petitioners. Petitioners filed a written protest with the Director of Revenue contesting the amount of the assessment. The protest was subsequently considered by John P. Fedele, Tax Manager for the Division of Revenue, and by Notice of Determination dated February 19, 1987, concluded that the proposed assessment was proper and thus denied the protest. Subsequently, Petitioners appealed the Notice of Determination by filing a Petition with the Tax Appeal Board.

Since the facts pertaining to this case were in dispute, the Tax Appeal Board held a hearing wherein Petitioner, Donald P.

Stroup, testified for Petitioners and Marion Ellen Dolman, the head of the Fraud Investigations Unit for the Division of Revenue, testified for the Respondent. In addition, various documents including copies of the 1980 and 1981 federal and state income tax returns, 1982 federal income tax return, and a letter dated October 24, 1986 from the Division of Revenue to Petitioners, were introduced into evidence.

The issue presented to the Board for decision was whether or not the Petitioners filed tax returns for the years 1980 and 1981.

The Board concluded after hearing all the testimony and reviewing the documents that the Petitioners had filed and paid Delaware income taxes for the years 1980 and 1981. The Board based this conclusion on the following facts from the evidence presented:

1. In 1980 and 1981, Petitioners Delaware income tax returns were prepared by H&R Block who gave the copies to Petitioners, the originals of which the Board concludes were filed with the Division of Revenue.

2. In both 1980 and 1981 Petitioners owed taxes over and above the amount of taxes that were withheld from their income, which taxes were paid by Petitioners by checks drawn on an out-of-state bank. Although Petitioners were unable to produce copies of their checks whereby they paid said taxes, the Board did accept their testimony that they had in fact been paid.

3. For tax year 1982 Petitioners filed their Delaware income tax return and as a result the Division of Revenue paid them a refund in the amount of \$357.00.

4. For tax year 1983 Petitioners filed and paid their

Delaware income taxes and as a result the Division of Revenue refunded to them approximately \$500.00. The Board concluded that the Division of Revenue would not have refunded the moneys if their records indicated that there was a problem covering prior years taxes.

For the foregoing reasons the Board concluded that Petitioners had filed and paid their 1980 and 1981 Delaware income taxes and therefore the assessment made by Respondent is reversed.

IT IS SO ORDERED, this 8th day of February, 1991.

Joseph S. Yucht  
Regina C. Andzior

Paul

Wacyns Roberts

Dissenting John H. Conroy