

file in the State of Pennsylvania and save that money. He advised Petitioner: "If they catch us we'll probably get a slap on the wrist."

Tom Gilligan, a Delaware preparer of taxes, was asked to prepare the 1985 returns. He reviewed the prior tax returns and advised Petitioner that they were improperly prepared. He prepared the 1985 returns in the same manner as the 1982-1984 returns were filed as instructed by Petitioner. He signed the federal return, but did not sign the Delaware return prepared for Petitioner's husband.

Petitioner plead guilty to one count of failing to file a Delaware tax return as part of a plea bargain agreement. Petitioner cooperated with the prosecution of her husband and the tax preparers, and has protested the penalties here at the suggestion of the prosecutor.

The Board finds the facts as stated above, IT IS SO ORDERED, this 8th day of September, 1989.

John H. Cordrey
Joseph J. Yacht
Regina C. Andjovic
Paul
Henry B. Polinsky

Petitioner asserts four bases for contesting the penalties assessed. Petitioner asserts that she has paid all taxes and interest and factually that is correct. The taxes and interest were not paid at the time required and that failure was with the knowledge that the funds were due and that "If they catch us we'll probably get a slap on the wrist." Such knowledge amounts to fraud as the failure to file or pay was not a result of a good faith challenge of the taxing laws nor the misinterpretation of said laws. Thus the fact that the taxes and interest were paid after Petitioner had been audited is not a defense to the imposition of the fraud penalties.

Likewise, the Petitioner's cooperation with the taxing authorities in the criminal prosecutions, while commendable, do not relieve her of the imposition of the fraud penalties. Petitioner's allegation that she is unemployed and on a very budgeted income were not proved at the factual hearing, but even assuming the allegations true, these facts have no bearing to the imposition of the penalties.

Finally, Petitioner alleges that she acted upon the advice of her accountant and therefore should not be assessed the penalties. The Board found that two accountants prepared Petitioner's taxes for the years in question and advised her. Mr. Williams advised Petitioner that filing in Delaware would increase her tax liability and the failure to file, if Petitioner were caught, would result in a "slap on the wrist." The suggestion that Petitioner might "get caught" certainly implies that the failure to file was unlawful. Acting upon the advice of an accountant could be used as a defense to the imposition of a fraud penalty if the accountant advised that the law, as the accountant interpreted it in good faith, did not require the filing. Such was certainly not the circumstances here.

Even assuming that Petitioner relied upon Mr. Williams' advice, her failure to properly file, after being advised by Mr. Gilligan that her past filings were incorrect,

demonstrates that the true intent of Petitioner was to defraud the State of Delaware. As this was Petitioner's intent, the assessment of Respondent is proper.

The Respondent's notice of Determination is therefore affirmed.

IT IS SO ORDERED, this 9th day of February, 1990.

John H. Cordrey
Joseph L. Guelker
Regina C. Dudgeon
Carol
George Polatoz