TAX APPEAL BOARD OF THE STATE OF DELAWARE

DENISE SABOL, Petitioner,	
V •) Docket No. 936
DIRECTOR OF REVENUE, Respondent.)))

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

Petitioner appeared pro se.

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

FACTUAL DECISION AND ORDER

John H. Cordrey, Esquire, Vice Chairman. This is the Board's decision regarding the facts of the above captioned case. The parties may submit simultaneous briefs arguing the facts and the law on October 12, 1989.

Petitioner filed federal joint tax returns with her husband for the 1982, 1983, 1984, and 1985 tax years. Petitioner was employed in the State of Pennsylvania during these years but resided in the State of Delaware. Petitioner filed Pennsylvania returns for these years either as a single individual or as married filing separately. Petitioner's husband filed Delaware returns as a single taxpayer, despite his marriage to Petitioner, which did not report the income of Petitioner.

All of the returns except the 1985 returns were prepared by Ronald Williams, a paid tax preparer from Pennsylvania. Mr. Williams advised Petitioner when he prepared the 1982 return that Petitioner could file a Delaware return but such a return would increase

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.

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Petitioner appeared pro se.

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

DECISION AND ORDER

John H. Cordrey, Esquire, Vice Chairman. This Board previously entered its decision regarding the facts of the above captioned case, and this is the Board's decision regarding the facts and the law.

A brief summary of the facts are as follows. Petitioner filed federal joint tax returns with her husband for the 1982, 1983, 1984, and 1985 tax years. Petitioner was employed in the State of Pennsylvania during these years but resided in the State of Delaware. Petitioner filed Pennsylvania returns for these years either as a single individual or as married filing separately. Petitioner's husband filed Delaware returns as a single taxpayer, despite his marriage to Petitioner, which did not report the income of Petitioner. Petitioner was assessed penalties by Respondent, and Petitioner has appealed the assessment of the penalties in this action.

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

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