

THE TAX APPEAL BOARD
FOR THE STATE OF DELAWARE

CARL R. POWERS,)	
Petitioner,)	
)	
v.)	Docket No. 937
)	
DIRECTOR OF REVENUE,)	
Defendant.)	

Carl R. Powers, pro se

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

DECISION AND ORDER

Joseph S. Yucht, Esquire, Chairman: The Respondent notified Petitioner by Notice of Assessment dated August 28, 1986, that he had assessed Petitioner the sum of \$34,869.20 for income taxes for tax years 1980-1984 inclusive, plus a fraud penalty. Petitioner filed a protest against said assessment with Respondent. By letter dated February 6, 1987, Respondent, notified Petitioner that he had abated the fraud penalty assessed, but affirmed the assessment of said sum of \$34,869.20. Said letter dated February 6, 1987 also informed Petitioner that:

"the law provides that within ninety (90) days from the date of this notice, you may file a petition for review of this assessment with the Tax Appeal Board. If you do not file a petition for review with the Tax Appeal Board within ninety (90) days, the law provides that this proposed assessment shall constitute a final assessment.

Should you desire to file a petition with the Tax Appeal Board, you may wish to contact Ms. Anne Carlton by phone at (302) 571-3327 or in writing at the following address: Tax Appeal

Board, Delaware State Office Building, 820 North French Street, Wilmington, Delaware 19801. Ms. Carlton can provide you with guidance as to appeal procedures."

Petitioner filed his appeal with the Tax Appeal Board on September 16, 1987. Said appeal was filed about 222 days after the Notice of Determination was dated. Respondent filed an Answer to Petition and also a Motion to Dismiss the Petition.

In the Petition, Petitioner contended, inter alia, that he was not a resident of the State of Delaware in 1980. The Respondent denied this allegation in his Answer and alleged Petitioner was a Delaware resident for the years 1980 to 1984. In the Motion to Dismiss Respondent moved the Tax Appeal Board to dismiss the Petition because the Petition was filed more than 90 days after the date of the Notice of Determination as required by 30 Delaware Code §1185. 30 Delaware Code §1185 provides that the action of the State Tax Commissioner on the taxpayer's protest is final upon the expiration of 90 days from the date when he mails notice of his action to the taxpayer unless within this period the taxpayer seeks review of the State Tax Commissioner's determination. The Tax Appeal Board scheduled a pre-trial conference for June 10, 1988 at which time the Petitioner informed the Board that he was prepared to argue the Motion to Dismiss.

The Respondent argued that since the Petition was not filed within the time limitation set forth in 30 Delaware Code §1185, the Tax Appeal Board did not have jurisdiction to consider the Petition.

The Petitioner presented approximately 44 pages of printed

material for the Board to consider. In addition, Petitioner wrote a letter to the Board dated June 12, 1980.

The Tax Appeal Board after considering all the evidence presented finds that the Petition was not filed timely as required by 30 Delaware Code §1185. Therefore, we do not have jurisdiction to hear the Petition. The Respondent's Motion to Dismiss is granted.

IT IS SO ORDERED this 9th day of September, 1988.






