



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

TECHNICAL INFORMATION MEMORANDUM 82-1

July 1, 1982

SUBJECT: Summary of Recent Significant Tax Appeal Board and Appellate Court Decisions

1. Robino v. Director of Revenue; Poppiti v. Director of Revenue, Superior Court of the State of Delaware, April, 1981.

The Superior Court affirmed the decision of the Tax Appeal Board which held that computation of interest on the taxpayer's refund for overpayment of taxes commenced on the day their amended returns claiming refunds of state income taxes were filed, in accordance with 30 Del. C., §1199 (b) (3), and not 46 days after filing the original return as contended by the taxpayers.

This decision was not appealed.

2. Seaside Village, Inc. v. Director of Revenue, Supreme Court of the State of Delaware, April 22, 1981.

The Supreme Court, in affirming the Superior Court, held that the period of limitations under 30 Del. C., §1911 (a) within which a corporate taxpayer could file its refund claim for overpayment of corporation income taxes based upon a net operating loss carryback commenced on the due date of the original return, and not on either the date the taxpayer filed an amended return or the end of the taxable year in which the net operating loss occurred.

In addition, the court, in reversing the Superior Court, held that either an application for tentative refund under I.R.C., §6411 or a claim for refund under I.R.C., §6402, which is accepted, will result in a "change or correction" of Federal tax liability within the meaning of 30 Del. C., §1911 (b). The court held that the transmittal by Internal Revenue Service of a refund check and the taxpayer's acceptance of the refund check constituted an "agreement" to a Federal change under 30 Del. C., §1911 (b), thus extending the statutory period within which to file a refund claim for one year.

3. J. W. Shockley & Son, Inc. v. Director of Revenue, Dkt. Nos. 666 & 667, Tax Appeal Board, May 8, 1981.

The taxpayer's sale of eggs was held to be exempt from the wholesalers

license tax pursuant to 30 Del. C., §2908 (b) which provides that "this Chapter shall not apply to the sale of unprocessed agricultural products by the owner or operator of a farm..." The taxpayer owned a farm which produced approximately 40% of the eggs sold by the taxpayer. The taxpayer purchased from other farms approximately 60% of the eggs it sold. The taxpayer also engaged in other activity unrelated to farming.

The Division of Revenue took the position that the taxpayer's egg sales were not exempt under 30 Del. C., §2908 (b) because the taxpayer engaged in activity which extended beyond the activity covered by the exemption. The Board rejected this position without discussion.

A secondary issue in this case was whether the taxpayer's sales of processed cheese were exempt under 30 Del. C., §2908 (b), which in pertinent part, provides "...nor shall this Chapter apply to the incidental sale by the owner or operator of a farm of processed agricultural products on the assumption that the purchaser of such products has acquired the same for consumption or use and not resale." During the nine-month period ending September 30, 1976, the taxpayer's sale of cheese amounted to approximately 24% of total sales.

The Division argued that the cheese sales were not "incidental" but the Board did not discuss this argument in its opinion. The Board concluded that the number of sales for resale was "di minimus" and found in favor of the taxpayer.

On Appeal, the Superior Court affirmed the decision of the Tax Appeal Board with regard to the egg sales. The court reversed the Board's ruling on the cheese sales. In so holding, the court stated:

"Since some of the cheese sold by the taxpayer was subsequently resold, taxpayer is not entitled to the exemption, and the Board's decision to the contrary must be reversed."

This decision was not appealed.

4. Schluderberg-Kurdle Company v. Director of Revenue, Dkt. No. 668, Tax Appeal Board, December 11, 1981.

The taxpayer contended that it was not subject to the wholesalers license

tax because it did not "do business" in Delaware and because the imposition of the wholesalers license tax against it would be in violation of the U. S. Constitution. The taxpayer employed salesmen who worked in Delaware but the taxpayer did not own or lease any offices, warehouses, garages or other real or personal property in Delaware.

The Tax Appeal Board held that the taxpayer was "doing business" in Delaware and therefore subject to the wholesalers license tax. After stating that it did not have jurisdiction to determine the constitutionality of taxing statutes, the Board held that the taxpayer's activities in Delaware were sufficient to create nexus with Delaware.

This decision is on appeal to the Superior Court of Delaware.

5. Estate of Philip DiEgidio v. Director of Revenue, Dkt. No. 715, Tax Appeal Board, December 11, 1981.

The sole issue before the Tax Appeal Board in this case was the interpretation of 30 Del. C., §1305, which provides in relevant part as follows:

"The gross estate shall include the value of all property to the extent of the interest therein held as joint tenants by the decedent and any other person...except such part thereof as may be proved to have originally belonged to such other person or never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth; provided, nevertheless, for up to \$200,000 of... personal property jointly owned by the decedent and his or her surviving spouse, one-half the value of such property shall be conclusively presumed to have been acquired from the decedent by the surviving spouse for an adequate and full consideration in money or money's worth." (Emphasis Supplied)

The taxpayer contended that it was entitled to both the exemption for property which originally belonged to the survivor, and the exemption for up to one-half of \$200,000 worth of property held with the surviving spouse. The Division argued that the underlined portion of the statute was only intended to eliminate the necessity of proving original ownership or actual contribution, which would otherwise be required, for up to one-half of \$200,000 worth of property held jointly with a surviving spouse.

The Board in allowing both exemptions held as follows:

"...it appears that it intended to assure that surviving spouses be allowed to exclude from gross income (sic) that which was his or hers originally and also, in addition thereto, the said marital provision."

This decision is currently on appeal to the Superior Court of Delaware.

Robert W. Chalk

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