



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

DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 84-6

December 27, 1984

SUBJECT: Summary of Significant Delaware Tax Case Decisions Issued  
By Tax Appeal Board and Appellate Courts During 1984.

1. John S. & Mary Burpulis v. Director of Revenue, Delaware Supreme Court, No. 106, December 4, 1984.

Personal Income Tax - Computation of Income - Two Earner Married Couple Deduction. By order dated December 4, 1984, the Delaware Supreme Court affirmed the decision of the Superior Court issued April 17, 1984 (C.A. No. 83A-DE-18). The Court stated that a full opinion would be forthcoming.

The Superior Court, reversing the decision of the Tax Appeal Board in Dkt. No. 806, upheld the validity of a Division of Revenue regulation (Tax Ruling 82-1) which required married couples filing separate Delaware returns to add back to taxable income the Federal deduction for two-earner married couples allowed in computing Federal adjusted gross income only if joint returns are filed. The Court held that the deduction may only be claimed by the husband and wife if they file a joint Delaware return as well as a joint Federal return.

2. James E. Schorah v. Director of Revenue, Tax Appeal Board, Dkt. No. 796, November 18, 1984

Petition for Review - Lack of Jurisdiction - The Tax Appeal Board dismissed a petition for lack of jurisdiction where the document filed by the taxpayer, although filed within 90 days from the date of assessment, merely stated "amended petition to follow" in lieu of clearly setting forth the alleged errors and facts relied on in support thereof, as required by Tax Appeal Board Rule 6. Hence, the document did not constitute a valid petition.

3. Magness Construction Co. v. Director of Revenue, Tax Appeal Board, Dkt. No. 789, September 14, 1984.

Notice of Deficiency Assessment - Validity of Notice. The Tax Appeal Board held that the taxpayer was not liable for the penalty imposed for late filing and payment of withholding taxes because the notice of assessment, although sent within the 3 year statutory period of limitations, was invalid since it did not spell

out in a clear and unambiguous notice the reason for the assessment, but merely recited the statutory sections of the law that provided the basis for the assessment. The Division of Revenue has appealed this decision to the Delaware Superior Court.

4. Elmer & Theodosia Gove v. Director of Revenue, Tax Appeal Board, Dkt. No. 802, September 14, 1984.

Contractor's License Taxes - Gross Receipts. The Board held that the taxpayer, a licensed contractor, was not subject to gross receipts tax on money received from his customers to pay for supplies (under a time and material contract) that were delivered directly from the supplier to the customer. The customer frequently made the selection of materials and charged them to the contractor's account as a convenience. The Board held the contractor acted as an agent, and that such money was paid to the contractor "in trust." Hence, the contractor never "received" the money for purposes of the gross receipts computation. The Division of Revenue has appealed this decision to the Delaware Superior Court.

5. Franklin-Fibre Lamitex Corp. v. Director of Revenue, Tax Appeal Board, Dkt. No. 776, March 9, 1984.

Wholesaler License Tax - Computation of Gross Receipts - Definition of Sale. The Tax Appeal Board upheld the position of the Division of Revenue that sales made by a Delaware corporation to out-of-state customers are subject to gross receipts tax when the goods are shipped F.O.B. place of shipment, Wilmington, Delaware, since title passes at that point. Since a sale is completed when title passes, the sale took place in Delaware and is subject to the gross receipts tax imposed by Chapter 29, 30 Del. C. The taxpayer has appealed this decision to the Delaware Superior Court.

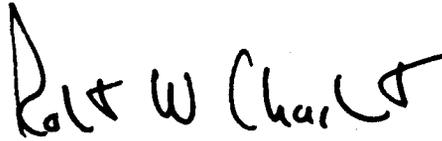
6. Estate of Ethel L. Maguigan v. Director of Revenue, Tax Appeal Board, Dkt. No. 777, January 13, 1984.

Inheritance Tax Assessment - Certificate of Clearance. The Board held that a certificate of clearance issued by the Division of Revenue pursuant to §2304, Title 12, does not preclude the Division from making an assessment of additional tax which is attributable to an audit of the return made subsequent to the issuance of the certificate.

7. Donald G. & Mary D. Gies v. Director of Revenue, Tax Appeal Board, Dkt. No. 782, December 9, 1983.

Personal Income Tax - Credits Against Tax - City Wage Taxes. The Board sustained the position of the Division of Revenue

in holding that a resident of Delaware is not entitled to claim a credit against Delaware income taxes, for wage taxes paid to the City of Philadelphia. Residents may only claim a credit for income taxes paid to another State.

A handwritten signature in black ink, appearing to read "Robert W. Chastant". The signature is written in a cursive, slightly slanted style.

Robert W. Chastant  
Director of Revenue

RRS/mrsc