

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2014-23

INDIVIDUAL JOINT TAXPAYERS,

Petitioners

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

I. Background

[Individual Taxpayers (the “Taxpayer” and “Spouse”*, or collectively, the “Petitioners”),] appeal from an assessment of Maine income tax made against them by Maine Revenue Services (“MRS”) in the amount of \$[amount] for the period [year 1] through [year 3]. Because the [Petitioners] did not request an appeals conference, the Board bases its decision solely upon the written materials submitted by the parties. 36 M.R.S. §151-D(10)(D); 18-674 C.M.R. ch. 100, § 106(6) (2014). The issues presented are whether the [Petitioners] are entitled to abatement of the interest and penalties assessed. It is the [Petitioners’] burden to show that they are entitled to the relief requested. 36 M.R.S. §§ 151-D(10)(F), 187-B(7). Because we find that they have not met their burden, the Board upholds the assessment in full.

II Facts

At all relevant times, the [Petitioners] were Maine resident individuals. Prior to and during the years at issue, [the Taxpayer] owned and operated a [consulting] business called [the “Business”]. [The Taxpayer also previously started a second business, which failed, leaving the

[* The redacted decision refers to the Petitioners using their respective designations as “Taxpayer” and “Spouse” as reflected on the Maine income tax returns that they filed in years prior to those at issue in this appeal.]

[Petitioners] with a large amount of debt that they satisfied by borrowing against their home.] Although their subsequent financial situation was difficult, the [Petitioners] were able to subsist on [the Taxpayer's] income from [the Business]. In early [year 1], however, one of [the Business's] major clients unexpectedly terminated its contract and the [Petitioners] were left without income for two and a half months while yet still incurring significant operating expenses.¹ Demand for [the Business's] work continued to soften,² and [the Taxpayer] was forced to accept less profitable projects and to accept work far from home . . . , further increasing business overhead and reducing profits.

The [Petitioners] did not file Maine income tax returns or pay their Maine liability for [year 1] through [year 3]. On [date], MRS first requested, and then on [date], formally demanded, that the [Petitioners] file their Maine returns for the years at issue within 60 days of the demand. When the [Petitioners] did not comply, MRS issued the assessment [of estimated tax, interest, and penalties] that is the subject of this appeal. We review the matter *de novo* pursuant to 36 M.R.S. § 151(2)(G).

III. Law

Annually, every resident individual who is required to file a federal income tax return for the taxable year or who has Maine individual income tax liability for the taxable year, is required to file a Maine income tax return on or before the date a federal income tax return is due to be filed, without regard to extension. 36 M.R.S. §§ 5220(1), 5227. If no return is filed, MRS may assess an estimated tax liability based upon the best information otherwise available, and such assessment is *prima facie* evidence of the tax liability for the period in question. 36 M.R.S. §

¹ [Footnote omitted.]

² [Footnote omitted.]

141(2)(C). If a taxpayer does not file a return within 60 days after receipt of a formal demand for filing, a penalty accrues equal to \$25 or 25% of the tax due, whichever is greater. 36 M.R.S. § 187-B(1)(B). MRS is required to waive or abate the penalty, however, for “grounds constituting reasonable cause.” 36 M.R.S.A. § 187-B(7).³

Every person subject to Maine income tax must also make estimated payments of the tax in quarterly installments. 36 M.R.S. § 5228(2), (4). This requirement is waived, however, if the person’s liability for the tax year, exclusive of withholdings and allowable credits, is less than \$1,000.00 or if the person had a tax liability of less than \$1,000.00 for the previous year. 36 M.R.S.A. § 5228(2). The failure to make estimated payments as required by 36 M.R.S.A. § 5228 is also subject to penalties, which accrue on the amount of any underpayment at the same rate established under 36 M.R.S.A. § 186 for interest on late payments of tax. 36 M.R.S.A. § 5228(5). The penalty for failing to make estimated payments may be waived or abated “for cause.” *Id.*

Finally, interest accrues automatically on the amount of tax due, calculated from the last date prescribed for payment and compounded monthly. 36 M.R.S. § 186. MRS may waive the liability for interest if the failure to pay the tax at issue “is explained to the satisfaction” of MRS.⁴ *Id.*

IV. Analysis

The [Petitioners] concede that they are liable for the income tax amounts assessed against them and that they have neither filed the returns demanded by MRS nor made any payments of

³ Reasonable cause includes, but is not limited to, the [seven situations described in 36 M.R.S. § 187-B(7), none of which are applicable to this case].

⁴ Maine’s tax statutes usually refer to the State Tax Assessor, the official who directs MRS, rather than the agency itself. To avoid confusion, however, we have replaced all references to the “Assessor” with “MRS” in all statutory language discussed or quoted herein.

the tax for the years in question. They argue, however, that the penalties and interest assessed against them should be abated on the ground that their failure to file, to timely pay their income tax liability, and to pay their estimated taxes was the result of their unanticipated financial problems. In addition, they state that they had previously always paid their taxes on time. The Board considers the [Petitioners'] argument in the context of each respective statutory section in turn.

A. Penalty for failure to file.

Section 187-B governs the abatement of penalties for failure to file Maine income tax returns. Pursuant to § 187-B(7), MRS must waive or abate the failure-to-file penalty if the taxpayer shows reasonable cause why the returns were not timely filed. The Board acknowledges that the [Petitioners] faced particularly difficult circumstances with regard to [the Taxpayer's] consulting business, as well as the industry in general. However, those circumstances do not constitute reasonable cause under 36 M.R.S.A. § 187-B(7) for the [Petitioners] not to have filed their [year 1], [year 2], and [year 3] Maine returns, regardless of whether they timely filed and paid their taxes in previous years. The [Petitioners] do not assert that they were unable to locate or compute any of the information needed to complete the returns for the period at issue, nor do they describe any other factors that might have prevented them from filing. Absent proof of reasonable cause for the [Petitioners'] failure to file, the Board is without authority to abate the assessed failure-to-file penalties.

B. Penalty for failure to pay estimated tax.

Section 5228(5) [of Title 36] governs the abatement of penalties for failure to pay estimated Maine income tax. Pursuant to section 5228(5), MRS may abate the penalty "for cause," although section 5228 does not define what constitutes "cause" for abatement of the

penalty. Because the amount of estimated tax is based directly on a taxpayer's income, computed on a quarterly basis, however, the taxpayer's financial difficulty is rarely a sufficient reason for failure to pay the tax and, consequently, for abatement of the penalties. The [Petitioners] do not provide an explanation for their failing to pay their estimated tax liability while yet earning sufficient income to incur a Maine income tax liability. Absent evidence to the contrary, the only reasonable inference that the record supports is that the [Petitioners] chose to pay creditors and expenses rather than their estimated tax liabilities. Because the [Petitioners] have not shown cause for abatement of the penalties under § 5228(5), the Board is without authority to abate the assessed penalties.

C. Interest

Finally, the [Petitioners] contend that they are entitled to an abatement of the interest assessed pursuant to 36 M.R.S. § 186 As recognized by the Maine Law Court, the interest requirement

supports the reasonable purpose that the investment value of money retained by late payment of taxes should benefit the State, not the individual or entity that delayed payment. However, “[i]f [a taxpayer's] failure to pay a tax when required is explained to the satisfaction of [MRS], [MRS] may abate or waive the payment of all or any part of that interest.” 36 M.R.S. § 186. This statutory language indicates legislative intent to confer upon [MRS] broad discretion to waive or abate the interest due on an unpaid tax when the delayed payment is satisfactorily explained.

Victor Bravo Aviation, LLC v. State Tax Assessor, 2012 ME 32 ¶ 8, 39 A.3d 65. The language of section 186 “indicates a highly discretionary standard that is not easily met by the taxpayer.” *Id.*

¶ 14. The [Petitioners] have not met their burden to explain satisfactorily their failure to pay their Maine income tax liability for the period at issue on or before the dates that those taxes were due. Consequently, the Board cannot abate the assessment of interest.

V. Decision

For the reasons explained above, we uphold the assessment in full.

The Board may, in limited circumstances, reconsider its decision on any appeal. If either party wishes to request reconsideration, that party must file a written request with the Board within 20 days of receiving this decision. Contact the Appeals Office at 207-287-2864 or see the Board's rules, available at <http://www.maine.gov/boardoftaxappeals/lawsrules/>, for more information on when the Board may grant reconsideration. If no request for reconsideration is filed within 20 days of the date of this proposed decision, it will become the Board's final administrative action. If either party wishes to appeal the Board's decision in this matter to the Maine Superior Court, that party must do so within 60 days of receiving this decision. During the 60-day period in which an appeal may be filed with the Superior Court, the [Petitioners] may contact Maine Revenue Services at 207-624-9725 for the amount of tax that is currently due, together with any interest or penalties owed. After that 60-day period has expired, Maine Revenue Services will contact the [Petitioners] with an updated amount of tax and any interest or penalties due at that time.

Issued by the Board: September 23, 2015