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Maine Board of Tax Appeals

Maine Department of Administration and Financial Services

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• **36 M.R.S. § 151-D(1)**
  
  “The purpose of the board is to provide taxpayers with a fair system of resolving controversies with the bureau and to ensure due process.”
• 36 M.R.S. § 151-D(10)
  – “[T]he board shall adopt rules . . . to ensure the speedy, efficient, just and inexpensive disposition of all proceedings . . .”

• 36 M.R.S. § 151-D(10)
  – The minimum amount that may be appealed to the Board is $1,000.
The $1,000 minimum amount is the original amount on reconsideration with MRS, without regard to any reduction through the reconsideration process.
I. A Brief Overview of the Penalties

36 M.R.S. §187-B
1. Failure to File

- A person is liable for one of the following penalties if the person fails to make and file any required return and the person’s tax liability is greater than $25.
• A. If the return is filed or the tax is assessed before the taxpayer receives a formal demand to file, then the penalty is $25 or 10% of the tax due (whichever is greater).
• B. If the return is not filed within 60 days after the taxpayer receives a formal demand to file, then the penalty is $25 or 25% of the tax due (whichever is greater).
  
  – NOTE- The 60-day period is extended (for up to 90 days) if the taxpayer requests an extension in writing before the expiration of the 60-day period.
• C. If the return is not filed and the assessor makes a determination of jeopardy, then the penalty is 25% of the tax due.
Failure to Pay

2. Failure to Pay

A. If a person files a return but fails to pay the amount shown as tax, then the penalty is 1% per month (or fraction of a month) of the unpaid tax, to a maximum of 25%.
Failure to Pay

• A-1. If a person fails to file a return and fails to pay the resulting assessment of tax, then the penalty is 1% per month (or fraction of a month) of the unpaid tax, to a maximum of 25%.

  – **NOTE** - The penalty is calculated retroactively from the original due date of the unfiled return.
B. The “Demand Penalty”
An additional 25% penalty is imposed where payment of the tax is not made within 10 days after a written demand for payment (after all appeal rights have been exhausted).
Negligence

• 3-A. The “Negligence Penalty”
  – A penalty of $25 or 25% of the underpayment (whichever is greater) is imposed where a person files a return that results in an underpayment of tax due to negligence or intentional disregard of the tax law or rules.

• NOTE - For the purposes of this section, “Negligence” means any failure to make a reasonable attempt to comply with the provisions of Maine tax law.
3-A. The “Fraud Penalty”

- A penalty of $75 or 75% of the underpayment (whichever is greater) is imposed where a person files a return that results in an underpayment of tax due to fraud with the intent to evade the tax.
4-A. The “Substantial Understatement Penalty”
- A filed tax return,
- An understatement of tax by more than 10% (or $1,000, if greater),
- Without fraud, negligence, intentional disregard, or intent to evade the tax law or rules.
The penalty amount is the greater of
- $5 per month (up to a maximum of $25), or
- 1% per month (up to a maximum of 25%) of the underpayment while the failure to pay continues.
“Substantial Authority” Reduction

- The amount of understatement is reduced by that portion of the understatement for which there is or was substantial authority for the tax treatment of any item by the taxpayer.

This reduction may affect

- whether an understatement is “substantial,” or
- the amount of a substantial understatement that is subject to the penalty.
Excessive Motor Fuel Refund

- 4-B. The Motor Fuel “Excessive Refund Penalty”
  - Imposed for claiming and receiving a refund of motor fuel tax that “substantially exceeds” the amount the taxpayer is entitled to.

- The refund is “substantially excessive” if it exceeds the amount to which the taxpayer is legally entitled
  - by more than 10%, or 1,000 (if greater).
The penalty amount is the greater of
- $5 per month (up to a maximum of $25), or
- 1% per month (up to a maximum of 25%) of the overpayment while the failure to repay continues.

“Substantial Authority” Reduction
- The amount of an excessive refund subject to penalty is reduced by that portion of the excessive claim for which the taxpayer has substantial authority supporting its position.
Other Penalties

- 5. The “Insufficient Funds (‘NSF’) Penalty”
  - (Greater of $20 or 1%)
- 5-A. The “Electronic Funds Transfer (‘EFT’) Penalty”
  - (Lesser of 5% of tax due or $5,000)
- 5-B. The Electronic Data Submission Penalty”
  - ($50)
FUN FACTS

- Penalties are generally cumulative.
- Interest does not accrue on penalties.
II. PENALTY ABATEMENT

—

REASONABLE CAUSE
36 M.R.S. § 187-B(7) requires that for reasonable cause, the State Tax Assessor must waive, abate, or refrain from imposing any penalty except:

- The “Negligence Penalty,”
- The “Fraud Penalty,” and
- The “Insufficient Funds (‘NSF’) Penalty.”

Reasonable cause includes, but is not limited to, the following circumstances:
• A. The failure to file or pay resulted directly from erroneous information provided by the Bureau of Revenue Services;

• B. The failure to file or pay resulted directly from the death or serious illness of the taxpayer or a member of the taxpayer's immediate family;
Penalty Abatement (continued)

• C. The failure to file or pay resulted directly from a natural disaster;

• D. A return that was due monthly was filed and paid less than one month late and all of the taxpayer's returns and payments during the preceding 12 months were timely;
Penalty Abatement (continued)

- E. A return that was due other than monthly was filed and paid less than one month late and all of the taxpayer's returns and payments during the preceding 3 years were timely;

- F. The taxpayer has supplied substantial authority justifying the failure to file or pay; or
Penalty Abatement (continued)

• G. The amount subject to the penalty is *de minimis* when considered in relation to . . .
  – the amount otherwise properly paid,
  – the reason for the failure to file or pay, and
  – the taxpayer's compliance history.
• **NOTE** - The burden of establishing grounds for waiver or abatement is on the taxpayer, unless the Assessor determines that grounds constituting reasonable cause are otherwise apparent.
III. SUBSTANTIAL AUTHORITY
JOHN SWENSON GRANITE, INC. v. STATE TAX ASSESSOR
685 A.2d 425 (Me. 1996)
n3. Although “substantial authority” is not defined in the Maine statutes, federal tax law defines the term as . . .

- “an objective standard involving an analysis of the law and application of the law to relevant facts.”
“The substantial authority standard is less stringent than the ‘more likely than not’ standard . . . but more stringent than the reasonable basis standard. . . .
John Swenson Granite v. State Tax Assessor

- “There is substantial authority for the tax treatment of an item only if the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment.”

• Conclusion

  – “The Superior Court properly upheld the penalties in this case. Swenson has already been the subject of two previous audits and was on notice that the State considered their sales taxable.”
VICTOR BRAVO AVIATION, LLC v. STATE TAX ASSESSOR
2011 ME 50, 17 A.3d 1237
In support of its claim for waiver or abatement, Victor Bravo offered evidence that the Assessor's own publications improperly indicated, "The same exemptions that apply to sales tax apply to use tax."
“Given the undisputed language of these publications and the statutory ambiguities identified in Blue Yonder and in the present case, we agree with the Superior Court that Victor Bravo provided ‘substantial authority’ for its failure to pay the use tax, notwithstanding that it was ultimately in error. “
“Because we agree with the Superior Court's conclusion, we affirm the Superior Court's abatement of penalties.”
Federal Authority

I.R.C. § 6662
Imposition of accuracy-related penalty on underpayments
I.R.C. § 6662

• I.R.C. § 6662(d)(2)(B)
  – The amount of understatement shall be reduced by that portion of the understatement attributable to tax treatment for which there is or was substantial authority for such treatment.
Treas. Reg. §1.6662-4(d)

- Treas. Reg. §1.6662-4
  - Substantial understatement of income tax

- Treas. Reg. §1.6662-4(d)
  - Substantial Authority
The weight accorded an authority depends on its relevance and persuasiveness, and the type of document providing the authority.
Because the standard is less than a preponderance (50%), there may be substantial authority for more than one position with respect to the same item.
A taxpayer may have substantial authority for a position that is supported only by a well-reasoned construction of the applicable statutory provision.
When is substantial authority determined?

There is substantial authority for the tax treatment of an item if there is substantial authority at the time the return containing the item is filed or there was substantial authority on the last day of the taxable year to which the return relates.
Types of Authority

- With certain exceptions, only the following are authority for purposes of determining whether there is substantial authority for the tax treatment of an item:
• 1. Applicable provisions of the Internal Revenue Code and other statutory provisions;
• 2. proposed, temporary and final regulations construing such statutes;
• 3. revenue rulings and revenue procedures;
• 4. tax treaties and regulations thereunder, and Treasury Department and other official explanations of such treaties;
• 5. court cases;
• 6. congressional intent as reflected in committee reports, joint explanatory statements of managers included in conference committee reports, and floor statements made prior to enactment by one of a bill's managers;

• 7. General Explanations of tax legislation prepared by the Joint Committee on Taxation (the Blue Book);

• 8. private letter rulings and technical advice memoranda issued after October 31, 1976;
• 9. actions on decisions and general counsel memoranda issued after March 12, 1981 (as well as general counsel memoranda published in pre-1955 volumes of the Cumulative Bulletin).
• 10. Internal Revenue Service information or press releases; and
• 11. notices, announcements and other administrative pronouncements published by the Service in the Internal Revenue Bulletin.
• What sources are “Not Authority”?
  – Conclusions reached in treatises, legal periodicals, and legal opinions, and
  – Opinions rendered by tax professionals.

• However, the authorities underlying such expressions of opinion may give rise to substantial authority for the tax treatment of an item.
Practice Tips

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2. The likelihood of penalties being cancelled or reduced is increased if your request is based on fairness and reasonableness.
3. The probability of penalties being cancelled or reduced increases if your situation sounds like one of the listed “reasonable causes” for abatement.
Questions?
Thank you!