

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2016-22

[CORPORATE TAXPAYER]

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Corporation] seeks relief from negligence penalties imposed by Maine Revenue Services as part of an assessment of sales tax. Based upon the evidence presented and the applicable law, we uphold the assessment of penalties.

I. Background

At all relevant times, [Corporation] (the “Corporation”) was a Maine corporation engaged in the restaurant business. The Corporation’s president and majority shareholder was [President] (the “President”) and, from [month, year 1] to [month, year 3], the Corporation’s treasurer and minority shareholder was [Treasurer] (the “Treasurer”). The President was employed as the restaurant cook, and the Treasurer was solely responsible for reporting and remitting the Corporation’s sales tax until the Treasurer left the Corporation in [month, year 3]. Also at all relevant times, the Corporation used computerized point-of-sale software to track individual sales and the sales tax collected for each sales transaction.

Following the Treasurer’s departure from the Corporation, the President began reporting and filing the Corporation’s sales taxes using the same method that the Treasurer had used. The President described this method as, on a monthly basis, (1) determining what funds were available to pay sales taxes, (2) reporting the gross sales and sales tax amounts commensurate

with the amount of available funds, (3) remitting the available funds to MRS, and (4) “trueing up” any sales tax balance due at the end of the year.

MRS conducted an audit of the Corporation’s sales tax compliance for the period [month, year 1] to [month, year 4], and determined that the Corporation had underreported its sales and had remitted only 75% of the sales tax that it collected during that period. Consequently, MRS issued an assessment against the Corporation for sales tax, interest, and negligence penalties. On appeal, the Corporation contests only the imposition of the negligence penalties, in the total amount of \$[amount], arguing that its actions in failing to report and remit sales tax should be excused and that the penalties should be abated. The Corporation has the burden of showing that it is more likely than not that MRS erred in imposing the penalties. 36 M.R.S. § 151-D(10)(F).

II. Discussion

Maine sales tax is imposed on the value of all tangible personal property sold at retail in this state. 36 M.R.S. § 1811. Sales tax is a levy on the consumer, but is required to be collected by the retailer. *Id.* §§ 1753, 1812. As a registered retailer, the Corporation was required to report and remit the tax collected to MRS on a monthly basis. *Id.* §§ 1951-A, 1952. A person who files a return “that results in an underpayment of tax, any portion of which is attributable to negligence . . . is liable for a penalty in the amount of \$25 or 25% of that portion of the underpayment, whichever is greater.” *Id.* § 187-B(3-A). In this context, “negligence” means “any failure to make a reasonable attempt to comply with the provisions of [Title 36].” *Id.* The term “reasonable” is not defined in 36 M.R.S. § 187-B(A-3). However, Black’s Law Dictionary defines the term as what is “fair, proper, or moderate under the circumstances.” *Id.* at 1379 (9th ed. 2009).

The Corporation argues that the assessed negligence penalties should be abated, on the grounds that it made a reasonable effort to hire a knowledgeable treasurer to correctly prepare and file its sales tax returns and remit the tax collected. The Corporation did not provide evidence, however, describing its hiring efforts, and did not explain how its hiring efforts might excuse its failure to correctly report and remit the sales tax that it collected. The Corporation also contends that the assessed penalty should be abated because the President was absent from work from [month, year 2] through [month, year 3], and thereafter worked only on a limited basis until [month, year 3].

Although a corporation can act only through its agents, *see Luker v. State Tax Assessor*, 2011 ME 52, ¶ 11, 17 A.3d 1198, a corporation is a legal entity, existing separately from its directors, officers, employees, and agents. 13-C M.R.S § 302. Consequently, only the fact of the Corporation’s reasonable compliance with its Maine sales tax reporting and payment obligations is relevant to the present case—not whether the conduct of the President and Treasurer, acting as individuals, was reasonable. The Corporation was required to report and remit the correct amount of its sales and the sales tax collected to MRS on a monthly basis. During the period at issue, however, the Corporation understated its taxable sales, understated its sales tax collected, and failed to remit to MRS the amount of tax that it did collect. We find that the Corporation had all the necessary information through its point-of-sale software to accurately file its sales tax returns with MRS in accordance with 36 M.R.S. § 1951-A, but did not do so. Furthermore, the Corporation does not contend that any provision of Title 36 permits it to report, remit, and “true-up”¹ the tax that it collected based upon its available funds, and we are not aware of any such provision. We therefore find that the Corporation did not make a reasonable attempt to comply

¹ No evidence was submitted showing that the Corporation ever remitted to MRS more tax than it collected.

with its sales tax obligations under Title 36, and that the negligence penalties were correctly imposed. No adjustment to the assessment on this basis is warranted.

III. Decision

Based on the law and the evidence presented, we uphold in full the imposition of negligence penalties under 36 M.R.S. § 187-B(3-A) as contained in the assessment.

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 motion 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 Corporation may contact Maine Revenue Services at 207-624-9725 for the amount of tax that is currently due, if any, together with any interest or penalties owed. After that 60-day period has expired, Maine Revenue Services will contact the Corporation with an updated amount of any tax and any interest or penalties due at that time.

Issued by the Board: July 20, 2017