

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2022-12

[CORPORATE TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Corporate Taxpayer], (the “Company”) appeals from a decision on reconsideration issued by Maine Revenue Service’s (“MRS”) upholding the assessment of failure-to-file penalties and failure-to-pay penalties against the Company related to tax years ,[year 14] [year 15] and [year 16]. The Company requests waiver or abatement of above-referenced penalties for failure to file tax returns and failure to remit taxes in these years. After considering the parties’ arguments and the evidence presented, we uphold the assessment of penalties in full.

I. Background

At all relevant times, the Company was a [state other than Maine]-based furniture company which sold furniture in Maine and in other U.S. states. The Company made retail sales and collected sales tax in Maine as far back as [year 1]. On [month and day], [year 14], MRS revoked the Company’s seller’s registration certificate for failure to timely remit sales taxes it had collected from Maine customers. On [month and day], [year 14], MRS permanently revoked the Company’s seller’s registration certificate for failing to file and/or pay sales tax due. However, the Company continued to sell products to Maine customers and to collect sales tax from customers (without filing tax returns or remitting sales tax) through [year 21]. In [month]

of [year 21], the Company applied for tax registration in Maine with a registration date of [year 14], the date the Company's registration was revoked. MRS approved the Company's application and issued the Company a new registration number; however, the Company failed to file sales tax returns with MRS for [year 21]. MRS requested that the Company file tax returns from [year 14] to [year 21]. On [month and day], [year 22], the Company filed sales and use tax returns for [years 14, 15, and 16], reporting the following taxable sales:

Year	Taxable Sales
14	\$1xx,xxx.xx
15	\$8x,xxx.xx
16	\$8x,xxx.xx

However, when it filed the above-referenced tax returns on [month and day], [year 22], the Company did not remit sales tax. Using the sales numbers provided by the Company for [years 14, 15, and 16], MRS issued a Notice of Assessment for sales tax, interest, and penalties for those years, in the following amounts:

Year	Tax	Penalties	Interest	Total
14	\$ [amount]	\$ [amount]	\$ [amount]	\$ [amount]
15	\$ [amount]	\$ [amount]	\$ [amount]	\$ [amount]
16	\$ [amount]	\$ [amount]	\$ [amount]	\$ [amount]

On [month and day], [year 22], MRS issued notices of underpayment and assessment of interest and penalties to the Company for [years 17, 18, 19, 20, and 21].¹

On appeal the Company does not challenge the correctness of MRS's computation of sales tax and interest owed for the period in question. Rather, the Company seeks abatement of penalties for failure to file tax returns and failure to remit taxes it collected for [years 14, 15, and 16]. It is the Company's burden to show that it is entitled to relief. 36 M.R.S. 151-D(10)(F). We consider the matter *de novo* as to facts and law. *Id.* at 151(2)(G).

II. Discussion

A. Scope of Appeal:

The Company's letter of appeal, [date], stated it was the Company's "formal statement of appeal... regarding the assessment of sales tax." The letter specifically identified the period of appeal as "[years 14, 15, and 16]." MRS's Decision on Reconsideration dated [date] addressed tax years [years 14, 15, and 16]. At the Case Management Conference held on [date], the Company's representative confirmed that the company was *not* seeking to appeal MRS's determination related to assessments for [years 17, 18, 19, 20, and 21]. In addition, the Board has not received an appeal from the Company regarding the separate MRS determination related to [years 17, 18, 19, 20, and 21]. Thus, the Board concludes this case relates solely to the Company's appeal of MRS's Decision on Reconsideration dated [date], involving tax years [14, 15, and 16].

B. Sales Tax:

Sales tax "is imposed on the value of all tangible personal property . . . sold at retail in this State." 36 M.R.S.A. § 1811; *see also id.* § 1752(11) (defining "retail sale"). Any person "who

¹ A question is raised, which the Board will address herein, as to whether the assessment for years 2017, 2018, 2019, 2020, and 2021 is before the Board in this case.

makes retail sales” is a retailer and must register. *See id.* §§ 1752(10), 1754-B. Although the sales tax is “a levy on the consumer,” Maine courts have long held that the legal incidence of the sales tax, that is the obligation to collect it, is on the retailer and not on the consumer. *See Harvey F. Gamage, Shipbuilder, Inc. v. Halperin*, 359 A.2d 72, 76-77 (Me. 1976); see also 36 M.R.S.A. § 1753. The sales tax collected by a retailer is held in special trust for the Assessor. *Id.* § 177(1). Once collected from the customer, it is the obligation of the retailer to (1) file periodic sales tax returns and (2) report accurately its sales and collected sales tax on those returns. *See id.* §§ 1754-B, 1951-A(1). The collected sales tax is due and payable on the same date the return is filed. *Id.* § 1952 (2010); 18-125 C.M.R. ch. 304 (2019). All amounts of sales tax collected must be remitted to MRS. *See, e.g.*, 36 M.R.S.A. § 1814(1) (requiring that even erroneous collections of sales tax be remitted to the extent they are not refunded to a customer).

In this case there is no dispute that the Company owes sales tax and interest for the years in question. The evidence is undisputed that the Company collected sales tax from Maine customers for years [14, 15, and 16], failed to file tax returns for those years until [year 22], and failed to timely remit those funds which it held in trust.

Where a retailer fails to file sales tax returns, Maine imposes a failure to file penalty of is “\$25 or 10% of the tax due, whichever is greater.” *Id.* § 187-B(1)(A). In this case, the failure to file penalty was 10% for each of the years at issue. Maine imposes a further penalty for failure to pay taxes of “1% of the unpaid tax for each month or fraction of a month during which the failure continues, to a maximum in the aggregate of 25% of the unpaid tax.” *Id.* § 187-B(2)(A). In this case, the penalty for failure to pay tax was 25% of the tax due for each year at issue. The penalties accrue automatically, without being assessed by MRS. *Id.* § 187-B(6). However, these penalties must be waived or abated, however, if the taxpayer establishes grounds constituting

“reasonable cause” for abatement. *Id.* § 187-B(7); *see also John Swenson Granite, Inc. v. State Tax Assessor*, 685 A.2d 425, 426, 1996 Me.

Section 187-B(7) provides a non-exhaustive list of circumstances which constitute “reasonable cause”

- A. The failure to file or pay resulted directly from erroneous information provided by [MRS];
- 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;
- 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;
- 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*
- G. The amount subject to a penalty imposed by subsection 1, 2, 4-A, or 5-A 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.

36 M.R.S.A. § 187-B(7) (emphasis added).

The Company makes argues that it is entitled to relief because it has provided substantial authority justifying its actions and because it has established reasonable grounds for its failure to file and failure to pay. Because the substantial authority standard is more stringent than the reasonable basis standard, we consider this argument first. *See John Swenson Granite, Inc. v. State Tax Assessor*, 685 A.2d 425, 429 n.3 (Me. 1996) (quoting Treas. Reg. 1.6662-4(d)(2), (3) (1996)).

i. Substantial Authority

The Company argues it is entitled to relief under 36 M.R.S. 187-B(7)(F), arguing that it has supplied “substantial authority justifying the failure to file or pay.”

Specifically, the Company asserts that its failure to file tax returns and failure to remit taxes during the period in question amounts to “substantial authority” because it was unaware that an individual it had hired in [year 14] to file and pay the Company’s taxes had failed to do so. We cannot agree.

Although “substantial authority” is not defined in the relevant Maine statutes, Maine courts have defined it as:

an objective standard involving an analysis of the law and application of the law to relevant facts. . . . There is substantial authority for the tax treatment of an item only if the weight of authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment.

State Tax Assessor v. Kraft Foods Grp., Inc., 2020 ME 81, ¶ 35, 235 A.3d 837. This analysis presupposes that the Company made a decision as to the treatment of the item based upon its examination of the relevant tax authorities or a “well-reasoned construction of the applicable statutory provision.” *Id.* ¶¶ 36-37. Here, the Company has not shown this to be the case. Accordingly, no adjustment to the assessment is warranted on this basis.

ii. Reasonable Cause

The Company next argues that it is entitled to relief because it has established reasonable grounds for its failure to file and failure to pay. We cannot agree. As discussed above, the list provided by section 187-B(7) is non-exhaustive. We must, therefore, also look to the meaning of the term “reasonable.” Because the term “reasonable” is not defined in the relevant statutes, we turn to the dictionary definition to determine the plain meaning of the word. *See, e.g., Apex Custom Lease Corp. v. State Tax Assessor*, 677 A.2d 530, 533 (Me. 1996). Black’s Law Dictionary defines “reasonable” as what is “fair, proper, or moderate under the circumstances.” BLACK’S LAW DICTIONARY 1379 (9th ed. 2009). Further, federal courts have defined “reasonable cause” to require “ordinary business care and prudence as to the disputed item.”

Combs v. Comm'r, T.C.M. (RIA) 2019-096 (T.C. 2019) (citing *United State v. Boyle*, 469 U.S. 241, 246 (1985)).

On the facts before us, the Company's actions for the period do not reflect fair, proper, or moderate conduct; nor has the Company shown that it acted with ordinary business care and prudence. Where the company engaged in the sale of millions of dollars of product during the period in question upon which it collected sales tax it is unreasonable to be unaware of unfiled and unpaid taxes.

The Schedule L's to Forms 1120S filed by the Company, reflect large-scale growth of the Company's sales tax liability over time, as follows:

Year	Schedule L Other Current Liabilities	Beginning of Tax Year	End of Tax Year
14	Sales Tax Payable	\$ [amount]	\$ [amount]
15	Sales Tax Payable	\$ [amount]	\$ [amount]
16	Sales Tax Payable	\$ [amount]	\$ [amount]
17	Sales Tax Payable	\$ [amount]	\$ [amount]
18	Sales Tax Payable	\$ [amount]	\$ [amount]
19	Sales Tax Payable	\$ [amount]	\$ [amount]
20	Sales Tax Payable	\$ [amount]	\$ [amount]

[The year 20 amount was nearly four times the year 14 amount]

Further, the Company's own notes to its audited financial statements make note of the growth in the collected but unpaid sales taxes:

Sales tax liabilities

[Redacted]

Accordingly, the Board must conclude that the Company knew or should have known of this ongoing increase in tax liability.

The Company has not established grounds for cancellation or abatement of penalties for failure to file and failure to pay under section 187-B(7). We uphold in full the penalties in assessment.

III. Decision

Based upon the evidence presented and the applicable law, we uphold in full the assessment of failure to file penalties and failure to pay penalties.

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/boarchoftaxappeals/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 taxpayer may contact Maine Revenue Services at 207-624-9595 for a statement of the amount then due. After that 60-day period has expired, Maine Revenue Services will contact the taxpayer with an updated statement of the amount or amounts due at that time.

BY ORDER OF THE BOARD

Date: _____, Chair/Member

