

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2022-08

[INDIVIDUAL TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayer] (the “Taxpayer”) appeals the assessment of Maine individual income tax and interest issued by Maine Revenue Services (“MRS”) for tax years [year 7], [year 8], and [year 9]. First, the Taxpayer argues that the Appeals Office erred in denying [their] motion to continue. Next, the Taxpayer argues that the assessment must be canceled because [they were] entitled to deduct certain vehicle related expenses. In the alternative, [they argue] that, if the assessment is correctly made, it should be canceled because of [their] inability to pay or because it must be offset by the Pandemic Relief and Winter Energy Relief payments, which payments [they assert they] did not receive. After considering the parties’ arguments and the evidence presented, we find no error with the denial of [their] motion to continue by the Appeals Office or with the assessment, and we uphold the assessment in full. Finally, we find that we do not have the power to forgive the assessment, nor do we have jurisdiction to offset the assessment with the Covid Pandemic Relief Program and Winter Energy Relief Program payments.

I. Background

At all relevant times, the Taxpayer maintained an address in Maine and worked at least part of the year for a Company that provided custodial services to the tourism and hospitality industry. For tax years [year 7], [year 8], and [year 9], the Taxpayer did not file Maine individual income tax returns because [they] believed no taxes to be due. In November of [year 11], based upon the information available to it, MRS issued the Taxpayer an estimated notice of assessment for the years at issue. Therein, MRS assessed \$[amount] in tax and \$[amount] in interest for tax year [year 7], \$[amount] in tax and \$[amount] in interest for tax year [year 8], and \$[amount] in tax and \$[amount] in interest for tax year [year 9], for a total of \$[amount]. The Taxpayer requested reconsideration. In response, MRS sent the Taxpayer a letter requesting additional evidence showing the estimated assessment to be incorrect. The Taxpayer did not supply the requested evidence, and MRS upheld its assessment. Thereafter, on September 30, [year 12], the Taxpayer filed [their] appeal with the Board. The Appeals Officer assigned to the Taxpayer's case held a case management conference on December 8, [year 12], and set a deadline of March 28, [year 13], for the Taxpayer's reply brief.

On March 1, [year 13], the Taxpayer was hospitalized because of a life-threatening illness. Thereafter, according to the Taxpayer, [their] illness continued, and it affected [their] ability to proceed with this appeal and caused [them] extreme financial hardship. The Taxpayer requested three continuances for the filing of [their] reply brief which the Appeals Office granted. The Appeals Office set December 13, [year 13], as the due date for [their] reply brief. The Taxpayer missed that deadline. On December 14, [year 13], the Taxpayer requested a further continuance but supplied no evidence to support [their] untimely request. The Appeals Office denied [their] request but provided that [their] request may be reconsidered if additional evidence was filed. In response, the Taxpayer submitted a letter from [their] doctor indicating

[they were] cleared to return to work as of December 14, [year 13]. In response, the Appeals Office again denied [the Taxpayer's] request and set a date of January 11, [year 14], for the Appeals Conference.

At the Appeals Conference, the Taxpayer was self-represented. The Taxpayer argued that the assessment is incorrect because it does not account for the deduction of the purchase and use of a "company car" for [their] "job." According to the Taxpayer, [they were] required to purchase the "company car" to be hired and to remain employed by [their] employer, as [their] job required [them] to have personal transportation to and from locations where [they] provided custodial services. The Taxpayer testified that the vehicle-related expenses at issue were monthly payments of \$217.00, \$300.00 for registration, and \$23.00 per week for gas. According to the Taxpayer, these deductions reduced [their] Maine individual income tax to zero. However, the Taxpayer provided no receipts or documentation to support [their] position.

In the alternative, the Taxpayer requested that the assessment be canceled due to [their] illness or that Pandemic Relief Program and Winter Energy Relief Program payments [they] did not receive be used to offset the assessment.¹

It is the Taxpayer's burden to show that [they are] entitled to relief. 36 M.R.S. § 151-D(10)(F). We consider the matter de novo as to facts and law. *Id.* § 151(2)(G).

II. Discussion

A tax is imposed on the Maine taxable income of every resident individual of this State each year. 36 M.R.S. § 5111. A resident individual who has a Maine individual income tax liability for a given year must file a tax return for that tax year. *Id.* § 5220(1). MRS may make

¹ The Taxpayer also complains that [they were] targeted for audit by MRS for [their] political party affiliation. However, even if this constitutes grounds to cancel or abate the assessment, an issue we do not consider, [they have] presented no evidence to support this assertion, and we do not consider it further.

an assessment of tax at any time with respect to a time period for which a return has become due but has not been filed. *Id.* § 141(2)(C). Further, we note that MRS has access to federal taxpayer information (“FTI”), obtained in accordance with I.R.C. § 6103(d)(2)(B), which MRS regularly uses to make estimated assessments when the taxpayer has failed to file a return for a given period and has further failed to provide the information that the State Tax Assessor determines is necessary to calculate that taxpayer’s liability for the period at issue.

After MRS has issued an assessment, a taxpayer “may request in writing, within 60 days after receipt of notice of the assessment or the determination, reconsideration by the assessor of the assessment or the determination.” *Id.* § 151(1). A taxpayer who wishes to appeal a reconsidered decision may appeal to the Board of Tax Appeals or to the Superior Court within 60 days of their receipt of the decision. *Id.* § 151(2). Here, the Taxpayer appealed to the Board of Tax Appeals.

The Board of Tax Appeals is an independent board within the Department of Administrative and Financial Services and is not subject to the supervision or control of MRS. *Id.* § 151-D(1). The purpose of the Board is to provide taxpayers with a fair system of resolving controversies with MRS and to ensure due process in an informal and easily accessible format. *Id.*; *see also* 18-674 C.M.R. ch. 100, §§ 104, 201(3), 203(7). In scheduling deadlines for submissions of arguments and evidence in an appeal before the Board, the Appeals Office, upon a party’s request, and with a showing of good cause, may extend the deadlines for submissions. 18-674 C.M.R. ch. 100, §201(E).

We review a denial of a motion to continue by the Appeals Office for abuse of discretion. *See, e.g., Daud v. Abdullahi*, 2015 ME 48, ¶ 6, 115 A.3d. The discretion of the Appeals Office “must be exercised judiciously and with an eye toward fundamental fairness, such that the denial

of a motion for a continuance does not have an adverse prejudicial effect on the movant's substantial rights." *Id.* at ¶ 7 (citations and quotations omitted). We, "look first at the reasons contemporaneously presented in support of the request for the continuance, because the party seeking a continuance has the burden of establishing a [good cause] why granting the continuance would further justice...." *Id.* at ¶ 6.

Here, the Taxpayer asked the Appeals Office for three continuances based upon [their] illness, which the Appeals Office granted. When [they] requested a fourth continuance, the Appeals Office denied [their] request but left open the opportunity for [them] to submit additional evidence in support of [their] request. The Taxpayer submitted a doctor's note which cleared [them] to return to work. We believe that if the Taxpayer had the ability to return to work, [they] had the ability to participate in the appeal process. We find no error in the decision of the Appeals Office to deny the Taxpayer's fourth request for a continuance.

We next consider the Taxpayer's argument that the deduction of expenses related to the use of [their] vehicle offsets [their] tax bill. For at least part of the period at issue, employees were allowed to deduct, as a miscellaneous itemized deduction, certain expenses related to the use of a personal vehicle in the course of their employment. *See e.g., Primuth v. Commissioner*, 54 T.C. 374, 377; *see also* I.R.C. §§ 162(a), 67, 68; *but see* Tax Cuts and Jobs Act (TCJA), P.L. 115-97, §§ 11045, 11046. However, it is the Taxpayer's burden to prove, by a preponderance of the evidence, that [they are] entitled to said deductions. 36 M.R.S. § 151-D(10)(F). Here, the Taxpayer has not provided any evidence to corroborate [their] claims regarding the vehicle beyond [their] own testimony, which, even if taken as wholly credible, is insufficient to prove the deductibility of the expenses. No adjustment to the assessment is warranted on this basis.

The Taxpayer next argues that the assessment should be canceled or abated because, due to [their] illness, [they are] unable to pay it. While we sympathize with the Taxpayer, our powers are limited to those specifically delineated by the legislature. *See* 36 M.R.S.A. § 151-D. The Taxpayer has pointed to no statutory authority granting us the power to cancel or abate the assessment because of [their] illness, and we are unaware of any such provision. Further, Maine courts have found that, where taxation is concerned, equitable considerations cannot be invoked. *See, e.g., Fitzgerald v. City of Bangor*, 1999 ME 50, ¶ 15, 726 A.2d 1253. Accordingly, we do not have the power to cancel or abate the assessment because of the Taxpayer's illness. *See Individual Taxpayer v. Me. Revenue Servs.*, BTA-2021-3 (Me. Bd. Tax App. Feb. 22, 2022) (Board lacks the power to cancel or abate assessments based on the requirements of justice). We note that, MRS may abate a tax liability "if justice requires" when a written request has been submitted by a taxpayer within 3 years of the date of assessment. 36 M.R.S.A. § 142. MRS also has the authority to settle a tax liability for a lesser amount "upon the grounds of doubt as to liability or doubt as to collectability, or both . . ." *Id.* § 143. However, as provided by each of those sections, MRS's decision to deny relief thereunder is not subject to appeal to the Board. *Id.* §§ 142, 143. However, we note that the Taxpayer may pursue the offer and compromise process with MRS. *See* <https://www.maine.gov/revenue/taxes/compliance/offer-in-compromise-instructions>. No adjustment to the assessment is warranted on this basis.

Finally, the Taxpayer asks that the assessment be offset by the Covid Pandemic Relief Payment Program and Winter Energy Relief Payment Program payments [they assert they] did not receive. The Legislature enacted both programs to provide financial relief to Maine taxpayers in the form of direct payments issued by MRS. The Legislature limited eligibility for both programs to Maine resident individuals having timely filed a Maine individual income tax

return for tax year 2021 and having income below certain thresholds. *See* P.L. 2021, ch. 635, § L-3 (1)(B); P.L. 2023, ch. 1, § B-3 (1)(B). Further, the programs require an individual who has not received payment to provide documentation to MRS by March 31, 2023, in the case of the Pandemic Relief Program, or by June 30, 2023, in the case of the Energy Relief Program, to show their eligibility. *See* P.L. 2021, ch. 635, § L-3 (2)(C); P.L. 2023, ch. 1, § B-3 (2)(C). Any determination as to eligibility for the programs on the part of MRS constitutes final agency action and is not appealable to this Board. *Id.* Therefore, we do not have jurisdiction to determine the Taxpayer's eligibility for these programs. Further, both programs provide that "notwithstanding any law to the contrary, [the relief payments] are not subject to setoff to debts owed to agencies of the State." *See* P.L. 2021, ch. 635, § L-3 (2)(D); P.L. 2023, ch. 1, § B-3 (2)(D). Accordingly, even if we had jurisdiction to determine the Taxpayer's eligibility, we could not use the payments to offset [their] assessment. No adjustment is warranted on this basis. We uphold the assessment in full.

III. Decision

Based upon the evidence presented and the applicable law, we uphold the assessment of Maine income tax and interest for tax years [year 7], [year 8], and [year 9] 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 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