

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2024-02

INDIVIDUAL TAXPAYERS,

Petitioners

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayers], (the “Taxpayers”), appeal from Maine Revenue Services’ (“MRS”) Decision on Reconsideration dated [date], upholding the assessment of individual interest and penalties for tax year [year 2]. MRS found that the Taxpayers failed to establish reasonable cause to abate the penalties and interest. While the Taxpayers concede that the assessment of tax and interest made by MRS is correctly computed, they request that the penalties and interest be waived or abated for reasons discussed below. After considering the parties’ arguments and the evidence presented, we uphold the assessment in full.

I. Background

Taxpayers’ [year 1] Maine Individual Income Tax return:

At all times relevant to this decision the Taxpayers were married Maine residents. The Taxpayers’ [year 1] Maine Individual Income Tax return and tax payment was due on April 15, [year 2]. However, pursuant to 36 M.R.S., Section 5231(1) (Supp. 2024), MRS provides all Maine residents with an automatic six-month filing extension, which extended the deadline for filing their [year 1] Maine Individual Income Tax return to October 17, [year 2]. The Taxpayers filed their Maine Individual Income Tax Return on October 17, [year 2]; they reported Maine

taxable income of \$[amount] and a resulting income tax liability of \$[amount]. The Taxpayers reported income tax withholding payments of \$[amount] and credits in the amount of \$[amount] for year [year 1], yielding an underpayment of \$[amount] which the Taxpayers paid with their return. Despite the filing extension to October 17, [year 2], the Taxpayers were required to pay their tax liability for [year 1] by April 15, [year 2]. MRS's Individual Income Tax FAQ provides, "to avoid penalties for late payments, you must pay at least 90% of the tax you owe by the original return date." *See* https://www.maine.gov/revenue/faq/individual-income-tax#faq1040_4 at ¶ 2 (last visited August 5, 2024). Due to the Taxpayers' failure to timely pay, on October 27, [year 2], MRS issued a Notice of Underpayment & Assessment of Interest and Penalties, assessing interest of \$[amount] and a failure to pay penalty of \$[amount]. On November 04, [year 2], the Taxpayers requested reconsideration of the interest and penalties, providing the following reason for their petition:

We were not aware of the following when our extension was filed and would therefore request reconsideration.

- 1) Additive tax burden of capital gains due to lack of information on [company] performance at the time taxes were filed for extension;
- 2) We were not aware of recent changes to the tax code that phased out the standard deduction base on income (this significantly increased our tax burden).

On November 23, [year 2], MRS issued a decision on reconsideration upholding the assessment of interest but abated the \$[amount] failure to pay penalty.

Taxpayers' [year 2] Maine Individual Income Tax return:

At issue in this case is the Taxpayer's request to waive or abate penalties and interest related to their [year 2] Maine Individual Income Tax return. The Taxpayers' [year 2] tax payment was due on April 18, [year 3], because April 15, [year 3], fell on a Saturday, and Monday, April 17, [year 3], was the Patriots Day holiday in Maine. Given the six-month automatic extension provided by 36 M.R.S., Section 5231(1), the Taxpayers' extended deadline

to file their [year 2] Maine Individual Income Tax return was October 16, [year 3]. The Taxpayer's filed their [year 2] Maine Individual Income Tax Return on November 06, [year 3], three weeks after the deadline. In their return the Taxpayers reported Maine taxable income of \$[amount] and a resulting income tax liability of \$[amount] for [year 2]. The Taxpayers reported income tax withholding payments of \$[amount] and credits in the amount of \$[amount] for year [year 2], yielding an underpayment of \$[amount]. The Taxpayers calculated they owed a penalty of \$[amount] for underpayment of taxes. When filing their tax return on November 06, [year 3], the Taxpayers remitted the income tax underpayment and penalty, totaling \$[amount].

On December 12, [year 3], MRS issued an Assessment of Underpayment, assessing interest of \$[amount] along with the following three penalties totaling \$[amount]: failure to file penalty of \$[amount], failure to pay penalty of \$[amount] and an underpayment of estimated tax penalty of \$[amount].

On January 04, [year 4], the Taxpayers requested reconsideration of the assessment of penalties and interest. The Taxpayers provided the following reason for their petition.

Our tax professional filed for extension on our [year 2] taxes because of a late K1 that came in from an account that we have limited control over...Our taxes for the year were a great deal higher than expected, because we were no longer eligible for any exemptions based on the phase out. We did not foresee [sic] this...

On March 01, [year 4], MRS issued a decision on the request for reconsideration, upholding the assessment of interest and penalties in full.

The Taxpayers have the burden to show that they are entitled to the relief they seek. 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

Waiver or Abatement of Penalties:

Every individual who has a Maine individual income tax liability for the taxable year must file a Maine income tax return, pursuant to 36 M.R.S. § 5220(1). Individual returns are typically due on April 15 of the year following the subject tax year. *Id.* § 5227; I.R.C. § 6072. However, the due date may be extended where it falls on a weekend or holiday. See 36 M.R.S.A. § 153(2). As stated above, the State Tax Assessor provides all Maine taxpayers with a six-month filing extension within the meaning of *Id.* § 5231(1). However, this extension does not extend the time for payment; amounts reported as due on a return are “payable on or before the date prescribed for filing the return,” without regard to any filing extension. *Id.* § 141(1). Further, every person subject to Maine income tax must also make estimated payments of the tax in quarterly installments. *Id.* § 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. *Id.* § 5228(2).

The penalty for failing to file a return when due, but prior to a formal demand being made, is “\$25 or 10% of tax due, whichever is greater.” *Id.* § 187-B(1)(A). Here, the Taxpayers maintain that their [year 2] return was filed on October 15, [year 3]; however, MRS did not receive [the Taxpayers’] [year 2] Maine Individual Income Tax form until November 6, [year 3], which is the date that the preparer signed the return.

The failure to make estimated payments is also subject to penalties, which accrue on the amount of any underpayment at the same rate established for interest on late payments of tax. *Id.* §§ 5228, 186. The penalty for failing to pay tax when due is “1% of the unpaid tax for each month or fraction of a month during which the failure continues,” to a maximum of 25%. *Id.* §

187-B(2). No failure to pay penalty is imposed on returns with extended filing dates unless the amount paid with the return is more than “10% of the total tax liability shown on the return.” *Id.* § 5231(3). In this case, the Taxpayers’ [year 2] payments made after the due date, totaling \$[amount], constituted more than 38% of the total tax of \$[amount].

Finally, the underpayment of estimated tax is subject to penalties. *See* 36 M.R.S. § 187-(4-A). The Taxpayers correctly calculated (and paid) the penalty for underpayment of estimated tax in the amount of \$[amount].

MRS will waive or abate penalties, “if grounds constituting reasonable cause are established by the taxpayer or if the assessor determines that grounds constituting reasonable cause are apparent.” *Id.* § 187-B (7), The statute further provides that:

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;
- 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.

Id.

The Taxpayer has the burden to establish grounds for abatement of penalties. *Id.* Based on the totality of the evidence, the Taxpayers have not established grounds constituting reasonable cause to waive or abate the penalties at issue. The Board is not persuaded by the

Taxpayers' argument that their [year 2] tax liability was unexpected. Nearly all of the Taxpayer's income in [year 2] was from wages, which increased by more than \$[amount] between [year 1] and [year 2]; the Taxpayers knew or should have known their liability would increase proportionally. Although the MRS did abate the Taxpayer's \$[amount] failure-to-pay penalty related to their [year 1] income tax liability pursuant to section 187-B(7)(E), the Taxpayers cannot utilize that exception in this case because the Taxpayers' payments during the preceding three years *were not timely*.

Waiver of Interest:

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 (Supp. 2024). MRS may waive the liability for interest if the failure to pay the tax at issue "is explained to the satisfaction" of MRS. *Id.* Section 186 creates a higher burden on the Taxpayer to obtain waiver of interest than the "reasonable cause" standard requires to waive penalties. The Law Court has said Section 186 creates a burden that is not easily met by the Taxpayer:

...[T]he satisfactory explanation standard in section 186 indicates a highly discretionary standard that is not easily met by the taxpayer. It supports the reasonable purpose of most statutory and contractual interest payment requirements to assure that the investment value of money inures to the benefit of the party that should have been paid the money when the payment obligation arose.

Victor Bravo Aviation, LLC v. State Tax Assessor, 2012 ME 32, ¶14, 39 A.3d 65.

The Taxpayer has the burden of establishing sufficient grounds for the abatement of the automatic interest. 36 M.R.S. §§ 151-D(10)(F) & 186. Where, as here, the Taxpayers had full use of the funds at issue during the time period that the tax was due, but not paid, the abatement standard "is not easily met". *See Victor Bravo Aviation*, 2012 ME 32, ¶14; *Precast Structures, Inc. v. State Tax Assessor*, 568 A.2d 517, 518 (Me. 1990). Here, the amount of tax at issue and

the Taxpayers' retention of those funds is not in dispute. The \$[amount] that the Taxpayers owed for tax year [year 2] was due on April 18, [year 3]. The Taxpayers did not remit those funds until November 6, [year 3]. The Taxpayers, rather than MRS, had full use of the funds owed to the State of Maine for their [year 2] income tax liability during those seven months. The automatic interest imposed by Section 186 recognizes the time value of money. MRS was justified here in declining to abate interest.

III. Decision

The Taxpayers have not met their burden to establish reasonable cause to abate penalties within the meaning of 36 M.R.S. § 187-B(7). Likewise, the Taxpayers have not established that MRS abused the discretion afforded by 36 M.R.S. § 186, in declining to abate interest. Based upon the evidence presented and the applicable law, we uphold in full MRS's Decision on Reconsideration dated [date].

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