STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2015-16

[INDIVIDUAL TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayer, (the "Taxpayer")] appeals from an assessment of Maine individual income tax, interest, and penalties issued by Maine Revenue Services ("MRS") for tax years [year 1], [year 2], and [year 3], in the total amount of $[amount]. The issues on appeal are (1) whether the assessment is time-barred, (2) whether the assessment is barred by principles of equitable estoppel, equity, or due process, and (3) whether the assessed penalties and interest should be waived or abated. After a review of the law and the evidence presented, we uphold the assessment in full.

I. Background

[The Taxpayer] filed Maine and federal individual income tax returns for [year 1] on [date, year 3]; for [year 2] on [date, year 3]; and for [year 3] on [date, year 4]. In [year 4], the Internal Revenue Service ("IRS") audited [the Taxpayer]'s federal returns and increased his federal adjusted gross income in each of the tax years at issue. Although required to do so under Maine tax law, [the Taxpayer] did not file amended Maine returns reflecting the changes made by the IRS on audit. In [date, year 9], MRS learned of the IRS audit adjustments and issued the

subject assessment on [date, year 9]. [The Taxpayer] requested that MRS reconsider the assessment, whereupon MRS upheld the assessment in full.[1] This appeal followed.

An Appeals Conference was held, at which [the Taxpayer] and MRS both appeared. [The Taxpayer] has the burden to show that it is more likely than not that the assessment is incorrect. 36 M.R.S. § 151-D(10)(F).

II. Discussion

A. Assessment of Tax

[The Taxpayer] first argues that the assessment is time-barred. A brief summary of the relevant tax law is in order. Annually, Maine income tax is imposed "on the Maine taxable income of every resident individual of this State." 36 M.R.S. § 5111. The Maine taxable income of a resident individual is equal to the individual's federal adjusted gross income with certain modifications provided by law. *Id.* § 5121. If an individual has a Maine income tax liability in a taxable year, the individual is required to make and file a Maine income tax return for that year. *Id.* § 5220(1). Also, an individual is required to file an amended Maine income tax return whenever the IRS changes or corrects any item affecting the individual's Maine income tax liability. *Id.* § 5227-A(1). Such amended return must be filed within 180 days from the date of the final determination of the federal change or correction. *Id.* § 5227-A(2).

Generally, a tax assessment may not be made after three years from the date the corresponding return was filed. *Id.* § 141(1).[2] However, "[a]n assessment may be made at any

[1] Subsequently, while this appeal was pending with the Board, MRS determined that the assessment erroneously includes a penalty for failure to make estimated tax payments for tax year [year 1], and has agreed to abate that penalty in the amount of $[amount].

[2] Under section 141(2)(A), the time for assessment is enlarged to "6 years from the date the return was filed if the tax liability shown on the return . . . is less than 1/2 of the tax liability determined by the assessor."

time with respect to a period for which a return *has become due but has not been filed*." *Id.* § 141(2)(C) (emphasis added).

Because [the Taxpayer] did not file amended returns for [year 1], [year 2], and [year 3], no period of limitation for assessment of tax, interest, and penalties associated with the unfiled amended returns ever began to run. Therefore, the assessment regarding those items is not time-barred.

Next, [the Taxpayer] similarly argues that the principle of equitable estoppel serves to bar MRS's assessment. The Law Court has consistently held, however, that estoppel may never be invoked "[w]hen the governmental function at issue is the discharge of responsibilities regarding taxation." *Fitzgerald v. City of Bangor*, 1999 ME 50, ¶15, 726 A.2d 1253.

> We first announced this rule in 1932, holding that estoppel cannot be raised to challenge the collection of taxes lawfully assessed, because to hold otherwise would impair the fundamental sovereign right of a state to assess and collect taxes. *See Town of Milo* [*v. Milo Water Co.*], 131 Me. 372, 378-79[,] [163 A. 163 (1932)]. In 1964, we expanded on this rationale, noting with approval cases from other jurisdictions holding that an administrative officer charged with the duty of collecting taxes had neither the power to abrogate the state's sovereign power to tax nor the power to grant an exemption to a taxpayer; thus, estoppel could not lie against the municipality for the administrator's actions. *See A.H. Benoit & Co.* [*v. Johnson*], 160 Me. [201] at 207-10, [202 A.2d 1 (1964)]. This rationale was reaffirmed in 1980 and 1994, when we concluded that the government could not be estopped in tax matters because taxation was "the paramount function of government by which it is enabled to exist and function at all." *M.S.A.D. No. 15* [*v. Raynolds*], 413 A.2d [523], 533 [(Me. 1980)], quoted in *Flower* [*v. Town of Phippsburg*], 644 A.2d [1031] at 1031 [(Me. 1994)].

Id. n.4. No adjustment to the assessment on this basis is warranted.

[The Taxpayer] also argues that the assessment is unfair and violates his due process rights under the United States and Maine constitutions. His argument is without merit. At [the Taxpayer]'s request, MRS conducted a reconsideration of the assessment and provided him with a decision on reconsideration, albeit upholding the assessment in full. Now, [the Taxpayer] has

also been afforded this *de novo* appeal of MRS's decision on reconsideration. Consequently, he has not met his burden of proof to show a due process violation.

B. Penalties

The assessment contains penalties for failure to file the amended returns required by 36 M.R.S. § 5227-A, as well as substantial understatement penalties. The substantial understatement penalty applies where a taxpayer files a return that understates his or her tax liability by more than 10%. 36 M.R.S. § 187-B(4-A). [The Taxpayer] argues that failure to abate the assessed penalties under the circumstances presented would be inequitable and unjust. Under 36 M.R.S. § 187-B(7), MRS must waive or abate penalties such as those contained in the assessment "if grounds constituting reasonable cause are established by the taxpayer." Although five years passed between the date of the IRS's adjustment of his federal adjusted gross income and the date of MRS's assessment—without [the Taxpayer]'s filing his amended Maine returns—the mere passage of time within the period of limitation does not constitute reasonable cause to abate or waive the assessed penalties. Furthermore, as noted above, while section 141(1) generally provides for a three year statute of limitations,[3] section 141(2)(C) provides an exception that allows an assessment to be made at any time with respect to a period for which a return, such as an amended return as required in this case, has become due but has not been filed. Thus, the assessed penalties do not fall outside the statute of limitations. No adjustment to the assessment is warranted on this basis.

[3] In pertinent part, 36 M.R.S. § 141 provides that "an assessment may not be made after 3 years from the date the return was filed or 3 years from the date the return was required to be filed, whichever is later."

C. Interest

Under 36 M.R.S. § 186, MRS may waive interest if the failure to pay the tax at issue "is explained to the satisfaction" of MRS. *Id.* As recognized by the Maine Law Court, the interest requirement supports the reasonable purpose that the investment value of money retained by late payment of taxes should benefit the State, not the individual or entity that delayed payment. However, "[i]f [a taxpayer's] failure to pay a tax when required is explained to the satisfaction of [MRS], [MRS] may abate or waive the payment of all or any part of that interest." 36 M.R.S. § 186. This statutory language indicates legislative intent to confer upon [MRS] broad discretion to waive or abate the interest due on an unpaid tax when the delayed payment is satisfactorily explained. *Victor Bravo Aviation, LLC v. State Tax Assessor*, 2012 ME 32 ¶ 8, 39 A.3d 65. The language of section 186 "indicates a highly discretionary standard that is not easily met by the taxpayer." *Id.* ¶ 14. Here, [the Taxpayer] has not met his burden of satisfactorily explaining his failure to file amended returns and pay any additional tax due in a timely fashion. No adjustment to the penalty or interest portions of the assessment on this basis is warranted.

III. Decision

As explained in detail above, we uphold the assessment in this matter in full. We note, however, that MRS has agreed to cancel the penalty for failure to make estimated tax payments for [year 1].

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

Issued by the Board: August 18, 2016