

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NOS. BTA-2017-10

[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 for tax year [year], arguing that the assessment is overstated. Finding no error, we uphold the assessment in full.

I. Background

At all relevant times, [the Taxpayer] was a Maine resident individual. When [the Taxpayer] did not timely file a Maine income tax return for tax year [year], MRS first requested, and then demanded, that he file one. When [the Taxpayer] did not respond to MRS’s filing demand, MRS issued an estimated assessment of [the Taxpayer]’s Maine income tax liability based upon the best information available, including information provided to MRS by the Internal Revenue Service. The assessment included tax in the amount of \$[amount] on income from [the Taxpayer]’s self-employment and his sale of stock, as well as a failure-to-file penalty and interest in the respective amounts of \$[amount] and \$[amount]—a total of \$[amount].

On appeal, [the Taxpayer] requests that the portion of the assessment which relates to his sale of stock be cancelled, on the ground that he used the funds from the sale to satisfy a property division provision of the divorce judgment between him and his prior spouse. Additionally, [the

Taxpayer] requests that the accrual of interest and additional penalties be stayed pending appeal. It is [the Taxpayer]’s burden to show that he is entitled to the relief he seeks. 36 M.R.S. § 151-D(10)(F).

II. Discussion

Annually, Maine income tax is imposed “on the Maine taxable income of every resident individual of this State.” 36 M.R.S. § 5111. Resident individuals having a Maine income tax liability for the taxable year or who are required to file a federal return must file a Maine income tax return on or before the date that a federal return is due, without regard to extension. 36 M.R.S. §§ 5220(1), 5227. If no return is filed, MRS may assess an estimated tax liability based upon the best information otherwise available, and such an assessment is *prima facie* evidence of the tax liability for the period in question. *Id.* § 141(2)(C). A failure-to-file penalty accrues where a taxpayer does not file a return within 60 days after receipt of a formal demand for filing. 36 M.R.S. § 187-B(1)(B). In addition, interest accrues on the unpaid balance of tax due until paid. *Id.* § 186.

A. Cancellation of Tax

[The Taxpayer] first requests that the Maine income tax imposed on income from his [year] sale of stock be cancelled. Although [the Taxpayer] explains that he used the proceeds of the sale to satisfy his financial obligations under the terms of his divorce judgment, he does not point to any provision of Maine or federal law making such income nontaxable, and we are aware of no such provision. Consequently, [the Taxpayer] has not met his burden to show that the assessment incorrectly included Maine tax on the income he received from his sale of stock. No adjustment to the assessment on this basis is warranted.

B. Accrual of Penalties

[the Taxpayer] also seeks to stay the accrual of additional penalties pending appeal. The only penalty contained in the assessment in this case is the failure-to-file penalty under 36 M.R.S. § 187-B(1)(B). The statute provides that “[i]f the return is not filed within 60 days after the taxpayer receives from the assessor a formal demand that the return be filed, the penalty is \$25 or 25% of the tax due, whichever is greater.” Unlike failure-to-pay penalties, the failure-to-file penalty does not continue to increase with time. Thus, no stay of further accrual of this penalty is necessary.

Under Maine tax penalty law, penalties for failure to file a return and for failure to pay a tax due accrue automatically, without being assessed by MRS. *Id.* § 187-B(6). This includes failure-to-pay penalties for individuals that have filed a return as well as for those that have failed to file a return. *See, e.g., id.* § 187-B(2)(A) and (A-1), respectively. Such penalties must be waived or abated, however, if the taxpayer establishes grounds constituting “reasonable cause” for abatement. *Id.* § 187-B(7). As provided by section 187-B(7), “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 evidence presented in the present case is insufficient to show whether additional penalties will accrue. Even assuming accrual, however, [the Taxpayer] has not established grounds for cancellation or abatement of penalties under section 187-B(7).

C. Accrual of Interest

[the Taxpayer] also seeks to stay the accrual of interest pending appeal. Interest accrues automatically on the amount of tax due, calculated from the last date prescribed for payment and compounded monthly, without being assessed by MRS. *Id.* § 186. Furthermore, “[a] tax that is upheld on administrative or judicial review bears interest from the date on which payment would have been due in the absence of review.” *Id.* The purpose interest under section 186 is that “the investment value of money retained by late payment of taxes should benefit the State, not the individual or entity that delayed payment.” *Victor Bravo Aviation, LLC v. State Tax Assessor*, 2012 ME 32 ¶ 8, 39 A.3d 65.

Interest may be waived or abated “[i]f the failure to pay a tax when required is explained to the satisfaction of [MRS]” 36 M.R.S. § 186. However, the language of section 186 “indicates a highly discretionary standard that is not easily met by the taxpayer.” *Victor Bravo*, 2012 ME 32, ¶ 14, 39 A.3d 65. Here, [the Taxpayer] has not met his burden to explain why interest should not continue to accrue on any unpaid portion of the assessed tax pending appeal.

III. DECISION

Based on the evidence submitted and the applicable law, we uphold in full the assessment of Maine income tax, penalties, and interest for tax year [year]. Furthermore, because no grounds supporting a stay of the accrual of additional penalties and interest pending appeal have been established, we deny the request for stay.

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: October 30, 2017