

[CORPORATE TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Corporate Taxpayer] (the “Company”), appeals from an assessment of Maine service provider tax (“SPT”) and interest, issued by Maine Revenue Services (“MRS”) for the period [year 4], through [year 7]. After considering the evidence presented and the applicable law, we cancel the interest contained in the assessment and uphold the remainder of the assessment in full.

I. Background

The facts of this case predate the Company’s [year 3] formation as Maine limited liability company.

As early as [year 1], the Company’s owner and managing member (the “Owner”) sold, installed, maintained, and repaired computer and telecommunications equipment as a sole proprietor. While in business, the Owner was registered with MRS as a retailer for purposes of both sales tax and SPT. In [year 3], the Owner contacted MRS and spoke with an MRS employee (the “Employee”) regarding the need for their continued SPT registration, and the Employee closed the Owner’s SPT account as unnecessary. The Employee left a note on MRS’s computer system to memorialize the contact as follows: “SPT account closed per conversation with taxpayer. Who does not do any business that falls under service provider. SPT Closed.”

Later that same year, the Company began operating the business and the Owner ceased operation. However, the Company did not register as a retailer with MRS but reported and paid sales tax using the Owner's prior sales tax registration number. Furthermore, in reliance on the information provided to the Owner by the MRS Employee, the Company did not register as an SPT retailer and did not commence reporting and paying the tax.

In [year 7], MRS initiated a sales and use tax audit of the Company for the period [year 4] through [year 7]. An MRS auditor (the "Auditor") reviewed the Company's returns (which were filed under the Owner's prior sales tax registration number) and the Company's QuickBooks data. At the conclusion of the audit, the Auditor determined that while the Company's sales and use tax compliance was acceptable, several transactions were identified as being subject to SPT. The Auditor then advised the Company to obtain its own sales and use tax registration and to register with MRS for SPT. The Company promptly complied with these recommendations, registering for both types of taxes in [year 7].

After completing the sales and use tax audit, MRS conducted an SPT audit of the Company for the same period, and issued the subject assessment in [year 8], for SPT of \$[amount] and interest of \$[amount], for a total of \$[amount]. No penalties were assessed because MRS determined that the Company's failure to report and pay SPT was in "reliance on the advice from Maine Revenue Services" Letter from the Auditor to the Company dated [year 9]. This appeal followed.

The Company argues that the tax and interest contained in the assessment should be cancelled or abated because its failure to file and pay SPT was caused by its reliance on MRS's erroneous advice. It is the Company's burden to show that it is entitled to the relief it seeks. 36 M.R.S. § 151-D(10)(F).

II. Discussion

A. Abatement of tax

The installation, maintenance, or repair of telecommunications equipment is a service subject to Maine SPT. 36 M.R.S. § 2552(1)(F). Liability for the tax is declared to be a levy on the seller, however, the seller may pass the cost of the tax to the purchaser if the seller includes the tax on a bill to the purchaser separately identifying the cost as SPT. *Id.* § 2552(2). In this case, the Company argues that the tax portion of the assessment should be cancelled because MRS provided it with erroneous information regarding whether it was required to report and pay SPT on its sales.

Maine's tax laws are enacted by the Legislature and we must construe those laws "to give effect to the legislative intent." *Community Telecommunications Corp. v. State Tax Assessor*, 684 A.2d 424, 426 (Me. 1996). We are without authority, however, to abate taxes on grounds not provided by law. *See e.g. Fortin v. Johnson*, 150 Me. 294, 303, 110 A.2d 605, 609 (1954) (refusing to grant a tax refund where not specifically authorized by statute). In the present case, the Company points to no specific provision authorizing cancellation or abatement of tax on the ground asserted, and we are aware of no such provision. We therefore uphold the tax portion of the assessment in full.

B. Interest

The Company also seeks abatement of the interest contained in the assessment. Interest accrues automatically on the amount of tax due but unpaid, calculated from the last date prescribed for payment and compounded monthly. 36 M.R.S. § 186. The purpose of interest is "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. Interest may be waived or abated if the failure to pay the tax at issue “is explained to the satisfaction” of MRS or, on appeal, to the Board. *Id.* §§ 186, 151(2)(G), *Victor Bravo*, 2012 ME 32, ¶ 12-15, 39 A.3d 65. 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.

In the present case, the Company failed to report and pay SPT in reliance on information provided by MRS, which information was, in retrospect, inaccurate. We find that under the circumstances presented, the interest contained in the assessment should be, and hereby is, abated in full. However, because the Company could have paid the assessed tax at the time of assessment, thereby halting the accrual of subsequent interest without losing its right to challenge the assessment, we do not cancel interest accruing after the assessment date. *See id.* ¶ 13. No further adjustment to the assessment is warranted.

III. Decision

Based on the evidence presented and the applicable law, we uphold the assessment of Maine service provider tax for the period [year 4] through [year 7], but cancel the interest contained in the assessment. We do not cancel the interest accruing after the date of assessment, however, if any.

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 Company may contact Maine Revenue Services at 207-624-9595 for the amount of tax that is currently due, together with any interest owed. After that 60-day period has expired, Maine Revenue Services will contact the Company with an updated liability amount due at that time.

BY ORDER OF THE BOARD

Date: _____, Chair/Member