

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

KENT LEASING CO.,)
)
 Petitioner,)
)
 v.) Docket No. 685
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

Before: Cyric W. Cain, Jr., Joseph S. Yucht, Esquire,
 Harry B. Roberts, Jr., Nettie C. Reilly,
 James C. Eberly, Sr., Esquire, Board Members

John W. Whitby, Petitioner, Pro Se.

John P. Fedele, Esquire, Deputy Attorney General for Respondent.

DECISION AND ORDER

Cyric W. Cain, Jr.: This case involves penalties for non-payment of the gross receipts tax pursuant to 30 Del.C. Section 2105.

Petitioner is a lessor of tangible personal property. The period covered is July 1, 1975 through December 1977.

On April 10, 1978 the Petitioner received a Notice of Assessment from the Division of Revenue for non-filing and non-payment of the third quarter 1977 gross receipts license tax return. It further states that it was due October 20, 1977 and received January 6, 1978.

The Petitioner in checking its records found that the taxes for the third quarter were paid October 7, 1977 and advised the Division of Revenue of this by letter on April 12,

1978. On April 25, 1978 the Petitioner was advised by the Division of Revenue that they had corrected their records and that the Petitioner was paid to date.

Petitioner further states that as a result of the April 10, 1978 Notice of Assessment and subsequent telephone conversations with the Division's Dover Office it learned that since July 1, 1975 its gross receipts license taxes had been unpaid through December 1977.

Petitioner immediately contacted their accountants and filed and paid with interest the back taxes to date. This was done on April 24, 1978.

On April 23, 1978 the Respondent computed a breakdown showing the Petitioner's receipts during the period, the tax, interest, and penalty due.

As of May 20, 1978, penalty in the amount of \$636.28 was due pursuant to 30 Del.C. Section 2105.

The penalty imposed by 30 Del.C. Section 2105 is imposed upon the late payment of taxes.

Pursuant to 30 Del.C. Section 2103(b) Respondent abated part of the penalty amounting to \$418.13.

On May 1, 1978 Petitioner paid the remainder of the penalty totaling \$218.15.

It is this item that the Petitioner seeks to recover.

The Petitioner, in his petition states that the Division of Revenue was unfair in its assessment. The Petitioner says that he voluntarily brought the matter to the Division's

attention and that the Division of Revenue had no prior knowledge of the taxes being owed.

The Petitioner is grateful for the partial penalty abatement in the amount of \$418.13, but feels as though full abatement is in order.

The Board agrees with the Petitioner.

It is clear that the Respondent granted partial abatement. Why not full abatement?

The Board concurs that in the absence of full abatement a partial abatement becomes purely arbitrary and when the taxpayer acts in proven good faith as in this case anything less than full abatement is without merit.

The petition is therefore granted.

IT IS SO ORDERED.

Joseph J. Gault
James C. Goff
Nettie C. Reilly
Harry B. Roberts
Cyril W. Cain

Dated: June 8, 1979

SYNOPSIS

DOCKET NO. 685

TAX SEGMENT: LICENSE TAX (GENERAL)
Late Payment

ISSUE: Penalties were imposed due to late payment of
tax.

The Division of Revenue learned that gross receipts tax was not paid from 7/1/75 through 12/31/77. They imposed tax, interest and penalty.

The Division of Revenue abated part of the penalty and taxpayer paid balance and filed claim for refund.

Petitioner claimed as he voluntarily brought the matter to the attention of the Division of Revenue no penalty should be imposed.

TAB DECISION: The Tax Appeal Board held that in the absence of full abatement a partial abatement becomes purely arbitrary and when the taxpayer acts in proven good faith anything less than full abatement is without merit.

DECISION: For Petitioner

DECISION DATE: June 8, 1979