

TAX APPEAL BOARD OF THE STATE OF DELAWARE

BOOTH GLASS CO., INC.

Petitioners,)

v.)

Docket No. 831 & 841

DIRECTOR OF REVENUE,

Respondent.)

Before: Joseph S. Yucht, Esquire, Chairman; John H. Cordrey, Esquire, Vice Chairman; Harry B. Roberts, David C. Eppes, and Regina Dudzic, Members.

Petitioners: John E. Messick, Esquire

Respondent: Joseph Patrick Hurley, Jr., Esquire, Deputy Attorney General.

DECISION AND ORDER

David C. Eppes, Member. The parties have stipulated to the facts as follows:

1. At the pretrial conference held before this Board on Friday, August 9, 1985, it was agreed between the parties and the Board to consolidate Docket Nos. 831 and 841.

2. The petitions set forth in Docket Nos. 831 and 841 involve identical issues stemming from identical factual circumstances.

3. The amounts in controversy are the penalties assessed for unpaid taxes, said assessments resulting from the examination by the Respondent of Petitioner's books and records.

4. The tax assessments underlying this appeal before the Tax Appeal Board stem from Petitioner's failure to timely file the relevant tax returns for the years in question as set forth in the petitions, docketed numbers 831 and 841.

5. Petitioner is seeking abatement of the penalties in controversy on the grounds that the failure to timely file the relevant returns was due to reasonable cause.

6. The facts relevant to the issue of reasonable cause are as follows:

(a) Prior to 1980, the tax reporting and bookkeeping functions of the corporation were being performed by the wife of the corporation's president.

(b) The wife of the president of the corporation left the company in 1979 and ceased performing the bookkeeping and tax reporting functions.

(c) The president of the corporation, while knowledgeable in contract and business matters, was not knowledgeable about bookkeeping and tax reporting functions nor was he involved in this part of the business operation.

(d) After the president's wife left the company, an employee was hired to perform the bookkeeping and tax reporting functions. However, this employee did not perform these functions to the satisfaction of the corporation's president. Sometime in 1984, the corporation replaced the bookkeeper with a better trained individual and has since engaged a certified public accountant to assist the corporation in this area.

(e) In 1982, a member of the president's family was the victim of an assault. This limited the amount of time the president of the corporation could devote to the company because of the time and effort he had to direct to his child's recovery, including the time required to conclude the protracted court proceeding which followed.

(f) The president of the corporation, the only executive officer of the corporation at the time, became very ill and was confined to his home for much of the period from June 1983 to January 1984.

The issue before the Board is whether reasonable cause existed for the petitioner to fail to file the required returns on a timely basis.

Petitioner argues that he promptly employed a bookkeeper after his wife quit performing the bookkeeping and tax reporting duties. It is petitioner's contention that in hiring the bookkeeper and relying on him (her) to prepare all necessary tax filings, he exercised ordinary business judgment. Petitioner argues that he relied on the bookkeeper in good faith and that the bookkeeper failed to perform the duties adequately.

The issue of reliance on others has been litigated with mixed results for the taxpayers. However, in the cases cited, the issue was whether reliance on an outside expert was sufficient to relieve the taxpayer of his filing duties. This Board knows of no precedent in which a company was absolved of liability by virtue of hiring lay employees to perform the tasks. To reach such a finding would be tantamount to relieving the company of its obligation to hire competent people and supervise them properly. It would be improper to find that the company should be relieved of penalties because it relied on its staff to get the job done, but the staff was unwilling or unable to do the job.

It is further argued that the petitioner was subject to a family tragedy and personal illness during the period of noncompliance and that the penalties should be abated.

This Board expresses it's sincere empathy for the petitioner. It was determined in oral argument, however, that returns were filed in 1980, the year after the petitioner's wife ceased performing the functions, and were not filed in 1981, the year before the family's tragedy. The Board believes that the misfortune of the petitioner was coincident, but not causal to the noncompliance. The facts would indicate that something occurred in 1981 to cause the company to cease filing the returns. We heard no evidence that would indicate that events dictated reasonable cause for noncompliance in that year.

DECISION AND ORDER

For the reasons cited above, the Board finds that reasonable cause did not exist for the petitioner to fail to file the returns in question.

Therefore, the decision of the Director of Revenue is affirmed.

IT IS SO ORDERED THIS 12th day of August, 1988.

Joseph S. Yeh

John H. Cordray

Regina C. Dudzio

David C. C.

Harvey B. Kolutsky