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TAX APPEAL BOARD OF THE STATE OF DELAWARE

Brandywine S'N R, Inc.)  
    Petitioner            )     Docket No. 949  
    v                     )  
Director of Revenue    )  
    Respondent          )

Before: Joseph S. Yucht, Esquire, Chairman; John H. Cordrey,  
Esquire, Vice Chairman; Regina C. Dudziec, Member.

Petitioners: Arthur Krieger, P.A.  
Respondent: Jos. Patrick Hurley, Jr.

Regina C. Dudziec, Member

This case involves the assessment of penalties and interest for non-filing of gross receipts tax returns and withholding tax returns for tax years 1/85 thru 12/85 and 8/86.

Petitioner contends that reasonable cause existed for the non-filing of taxes, and that upon notification by the Division of Revenue that the possibility existed that the 1985 taxes had not been filed nor payment made, Petitioner immediately moved to investigate this matter. Petitioner found that its bookkeeper did not remit the gross receipts taxes. Petitioner has cooperated fully with the Division and has sought to repay this tax liability. There is no dispute as to the tax due; however, Petitioner contends the penalty applied was capricious.

FACTS IN THE CASE

Petitioner owned two supermarkets, one in Delaware and one in Pennsylvania. The Pennsylvania operation

overexpanded and suffered huge financial losses. The suppliers demanded payment and Petitioner was making payments on account. Petitioner's bookkeeper was in charge of apportioning the payments as seen fit. The bookkeeper prepared all checks for signature by the Petitioner, including those for gross receipts and withholding taxes, but did, in fact, withhold the mailing of the payments to the Division of Revenue, allegedly in an attempt to help the company survive this business reversal. The bookkeeper was also responsible for verifying all bank statements.

Petitioner contends that when this matter was brought to its attention by the Division of Revenue, all the checks which were held back - which had been retained in the bookkeeper's desk - were presented to the Division of Revenue in an attempt to prove it was not aware payments had not been made. These checks, according to Petitioner, are no longer available and hence were not presented to the Board in evidence.

#### DISCUSSION

The issue before this Board is whether reasonable cause existed for non-payment of the taxes in question. In deciding whether reasonable cause existed, the Board must consider all the relevant facts, evidence and testimony.

It seems plain that if checks were, in fact, being drawn to the Division of Revenue against Petitioner's account, routine audits should have picked up any discrepancies that existed. Clearly, Petitioner failed in its responsibility to install proper checks and balances in its accounting methods and to properly oversee its operation.

The failure of the Petitioner to pay gross receipts and withholding taxes is not excused by the fact that the

Petitioner's bookkeeper failed to mail the checks and file the returns. The Petitioner's reliance on the bookkeeper is not a reasonable cause for abatement of the assessed penalties. It is the Petitioner's responsibility to see to it that the returns are filed and the taxes are paid.

DECISION AND ORDER

For the reasons cited above, the Board finds for the Respondent.

IT IS SO ORDERED this 9th day of June, 1989.

Regina C. Dodgins  
John H. Cordrey  
Joseph D. Yucht

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