

✓

TAX APPEAL BOARD OF THE STATE OF DELAWARE

MIZL CORPORATION

Petitioner)

v.)

DIRECTOR OF REVENUE,)

Respondent.)

Docket No. 950

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

Petitioners: Robert J. Drew, C.P.A.

Respondent: Amanda S. Krasinski, Esquire, Deputy Attorney General.

This case involves the assessment of penalties and interest against the Petitioner for late payment of withholding taxes in 1985, 1986 and 1987.

Petitioner contends that reasonable cause existed for the late payment of the taxes in these years. Specifically, Petitioner contends that they filed Form BMF on December 23, 1985 and expected to receive forms with which to remit taxes withheld from employees as a result of that filing. When such forms did not arrive, Petitioner contends that they made several phone calls to the Respondent and wrote several letters requesting the necessary forms. When the forms did eventually arrive, the Petitioner promptly paid all taxes due and submitted the required forms. Respondent then assessed penalties and interest against Petitioner on the grounds that the taxes were not paid timely.

Respondent argues that it is the responsibility of the taxpayer to obtain all required forms and submit taxes on a timely basis. Respondent further argues that even absent the required forms, Petitioner could have remitted the required payments along with a written explanation of how the remittance was to be processed.

FACTS IN THE CASE

Petitioner presented evidence to support its contention that it filed Form BMF and subsequently made several written requests for forms. Petitioner also testified that it made several phone calls and that it made timely filings and payments for Delaware Unemployment Compensation Taxes and Delaware Corporate Income Taxes. Further, testimony was introduced which supported Petitioner contention that the format of Form BMF would lead a reasonable person to conclude that this form was used, in part, to set up withholding accounts at the Division of Revenue.

Respondent presented evidence that many taxpayers remit taxes without having proper forms. Such taxpayers merely attach written instructions with the payment to enable the Division of Revenue to apply the payments. Respondent contends that Petitioner should have done the same if it was unable to obtain forms. Alternatively, Petitioner could have picked up the required forms personally. Accordingly, Respondent argues the reasonable cause did not exist for late payment of the taxes.

DISCUSSION

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

The important facts in this case were that the Petitioner apparently made a good faith attempt to comply with all the taxing and reporting statutes of the State of Delaware. We believe that Form BMF was filed timely and that the Petitioner had reasonable cause to conclude that submission of withholding forms would result from this filing. We believe that the Petitioner made several attempts to obtain the forms in question. We further believe that Petitioner made all other payments and filings in a timely manner.

Clearly, Petitioner could have made further efforts to obtain the required forms or could have submitted the funds without the required forms. The question before the Board is not whether the Petitioners actions and efforts were exhaustive but rather whether they were reasonable. We believe the petitioners actions were reasonable under the circumstances.

DECISION AND ORDER

For the reasons cited above, The Board finds for the Petitioner. Therefore, the decision of the Director of Revenue is reversed. However, the Board finds that Petitioner did enjoy the use of the funds during the period in question. Accordingly, we direct the Respondent to compute the interest on the tax and assess this interest against the Petitioner.

IT IS SO ORDERED THIS 13th day of January, 1989.

Paul C. [Signature]
Harry B. Roberts.
Joseph S. [Signature]
John H. Cordery
Regina C. [Signature]