

TAX APPEAL BOARD OF THE STATE OF DELAWARE

J. E. RHOADES & SONS, INC.,)

Petitioner,)

v.)

DIRECTOR OF REVENUE,)

Respondent.)

DOCKET NO. 982

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

John P. McGough and Kevin Wooters, Pro Se.

Donald E. General, Esquire, Deputy Attorney General for Respondent.

DECISION AND ORDER

DAVID C. EPPES, MEMBER. This case involves the assessment of penalties for the non-payment of state withholding taxes for the period of January 1988 through August 1989. A brief summary of the facts shows that the Petitioner had employed an accountant from May 1987 through November 1987. Upon the accountants termination, the Petitioner learned that he had performed his duties in an incompetent manner, leaving the Petitioner with a severe cash flow deficiency, including an amount due the State of Delaware for withholding taxes for the period of January 1988 through August 1989.

When the Petitioner realized that its newly-discovered financial commitments could not be met in a timely manner, the officers contacted all interested creditors, including the State of Delaware with regard to its delinquent account for withholding taxes. Accordingly, in July 1988, the Petitioner paid to the State of Delaware, the withholding taxes due for January 1988 as an initial payment on the delinquent account. On September 16, 1988, the Petitioner received a notice of assessment for

penalties and interest for the January tax, at which time the Petitioner responded with a written protest. The penalty was abated about 11 weeks later on December 6, 1988.

The Petitioner commenced payment of the remaining taxes in January 1989. Once again, penalties and interest were assessed; however, the Petitioner did not receive relief from its protests to these assessments, as penalties on these subsequent payments were not abated. The Petitioner contends that reasonable cause existed to justify their late filings, and based on the initial abatement of penalties on the January 1988 payment, all subsequent assessments of penalties should likewise be abated.

The issue before the Board is whether there exists reasonable cause for abatement of all penalties assessed for the late filing of the Petitioner's state withholding tax returns.

In reaching our conclusion, we must first distinguish the case at bar from our previous decision in Brandywine S 'n B, Inc. v. Director of Revenue, Delaware Tax Appeal Board, Docket No. 949, June 9, 1989. In Brandywine, the Board held that mismanagement by a bookkeeper is not reasonable cause for the non-payment of taxes since it is the ultimate responsibility of the taxpayer to make sure such taxes are paid. Although the Brandywine holding may appear applicable to this case on its face, several circumstances exist in the case at bar which warrant a holding to the contrary.

First, the Board feels that it is the responsibility of a taxpayer to take reasonable steps to assure that tax filings and payments are made in a timely fashion. The question raised in this case is whether the late filing of taxes is a de facto admission that reasonable steps were not taken. To reach that conclusion would obviate the need for abatement provisions since no late payment would ever be reasonable. So, the Legislature must have envisioned some standard whereby the conduct of taxpayers can be judged reasonable. The Board feels that the taxpayers responsibilities are: 1) To attempt to

hire competent people through interviewing techniques, researching personal references and looking at education and experience levels, 2) To request and receive regular feedback from the responsible individual and, 3) To employ outside experts where necessary to oversee the work of the employees. If a taxpayer takes these steps, that taxpayer is acting reasonably. The taxpayer does not have an absolute responsibility to achieve the desired result, rather he has a responsibility to act responsibly in the management of the companies affairs. In this case, we believe that the owners of the company regularly included the accountant in weekly staff meetings and discussed the state of the companies finances. We also believe that the accountant deliberately withheld information or presented false or misleading information to the owners.

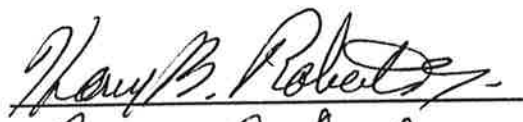
The Petitioners veracity is substantiated by its actions after discovering that it was in deep financial trouble. The Petitioner promptly contacted all creditors and made arrangements to pay the outstanding obligations. The Petitioner contacted the State and brought the problem to the State's attention. Initially the State was quite helpful and it even abated penalties for one months delinquency. While these factors are not determinative, they do help us in distinguishing the case from Brandywine.

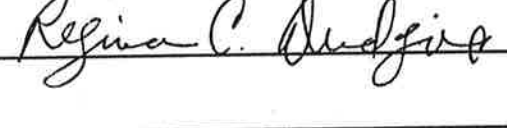
For the foregoing reasons, the Board finds in favor of the Petitioner.

IT IS SO ORDERED.









December 12, 1991