

B-Jac Investments
v.
Department of Revenue Administration
Docket No. 5592-88

DECISION

The "Taxpayer" appeals, pursuant RSA 77-A:14, the "DRA's" imposition of penalties pursuant to RSA 21-J:31 (\$14,005.50 for failure to timely file the return) and RSA 21-J:33 (\$5,602.20 for failure to timely pay the tax) for fiscal tax year 1986. In this de novo proceeding, the Taxpayer has the burden of showing the DRA's imposition of the penalties was erroneous. See TAX 203.05(c); Appeal of Steele Hill Development, Inc., 121 N.H. 881, 884-85 (1981) (hereinafter referred to as "Steele"). To carry this burden, the Taxpayer must show it acted reasonably and not due to wilful neglect or intentional violation. See RSA 21-J:31, 33; Steele, 121 N.H. at 884. For the reasons stated below, we find the Taxpayers failed to carry this burden, and therefore, the Taxpayer's appeal is denied.

The facts are straightforward and undisputed. Therefore, rather than reiterate the facts, we refer the parties to the facts stated in the DRA's memorandum. The Taxpayer admits it filed its return late and it paid the tax late. The Taxpayer, however, claims these failure were caused by its

accountant's failure to do his job to timely prepare and file the return. The

Taxpayer also testified it made efforts to get its accountant to prepare and file the return, failing that the Taxpayer tried to get the accountant to return the books so the Taxpayer could find another accountant to do the work.

While the facts are not in dispute, the parties dispute the legal effect of the facts. The Taxpayer claims the facts support its position that it acted reasonably and without willful neglect. The DRA takes the contrary position.

The board finds the Taxpayer's failures to comply with RSA 21-J:31, 33 were due to willful neglect and were not due to some other reasonable cause. The DRA correctly argued the Taxpayer's accountant is the Taxpayer's agent, and thus, the Taxpayer is bound by the accountant's failure to timely prepare the return or respond to the Taxpayer's request for the Taxpayer's books. Because the accountant acted with wilful neglect, the Taxpayer is deemed to have acted with willful neglect. See Tessier v. Blood, 122 N.H. 435 (1982) (attorney's neglect imputed to client, barring an untimely filed lawsuit).

The DRA's job, to effectively manage the tax collection system, cannot be hindered by taxpayers who try to blame their agents for the taxpayers' failure to comply with the law. To hold otherwise would require the DRA to moderate disputes between a taxpayer and its accountant. This is not the DRA's job, especially when taxpayers have the right to sue their accountant if the accountant's negligence results in the taxpayer paying unnecessary penalties. See Id. (plaintiff's relief is to sue negligent attorney).

Even if we were to find the accountant's neglect should not be imputed to the Taxpayer, we would still hold for the DRA because the Taxpayer's efforts to obtain its books from the accountant fell far short of those needed

to show due diligence. The Taxpayer knew the state tax laws, it knew the accountant was not reliable, and it knew it was about to receive a large, final payment on an installment sale upon which tax would be due. It should have acted more promptly and more aggressively in seeking to obtain its file.

For the above reasons, the Taxpayer's appeal is denied. If the Taxpayer has not paid the penalties, it shall do so within 20 days.

SO ORDERED.

July 30, 1991

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin

Ignatius MacLellan

Michele E. LeBrun

I certify that copies of the within decision have been mailed this date, postage prepaid, to Mark Bonjorno, P.O.A., representing the Taxpayer, and to Michael J. Norris, Hearing Officer, Department of Revenue Administration.

July 30, 1991

Brenda L. Tibbetts, Clerk