Stuart N. Shaines and Honey A. (deceased) Shaines

v.

Department of Revenue Administration

Docket No. 9914-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 77:25, the department of revenue administration's (DRA) denial of a waiver of interest imposed under RSA 21-J:28. The interest was computed on a dividend distribution that the Taxpayer failed to report. The Taxpayer has paid the tax due and the interest, and no other penalties were assessed. Both parties agreed with the facts presented in the DRA's memorandum, and thus, the board will not recite the facts here. We note, however, the DRA's concession that the Taxpayer's noncompliance was not willful. For the reasons stated below, the appeal is denied.

The Taxpayer argued the interest should be abated because: 1) the interest rate - - 15% - - is excessive; 2) the DRA's delay in notifying him of the tax due was unreasonable; and 3) he has always acted in good faith and his failure to pay the tax on time was not due to willful neglect.

The board denies the Taxpayer's appeal, finding, in this case, we are bound by the interest requirements of RSA 21-J:28. While it is true the board has equitable powers under RSA 77:25, via RSA 76:16-a, the board cannot exercise this equitable power when there is a statute that covers the specific issue at hand. Nevertheless, while the board denies the Taxpayer's appeal, the board agrees with the Taxpayer that the 15% interest rate seems excessive, especially given the market interests rates and the lack of any willful neglect on the Taxpayer's part.

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George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I certify that copies of the following decision have this date been mailed, postage prepaid to S.N. Shaines, taxpayer; and the Department of Revenue Administration.

Valerie B. Lanigan, Clerk

Date: December 2, 1992

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