

Donald Battis and Barbara Battis

v.

Department of Revenue Administration

Docket No. 9971-90

DECISION

The "Taxpayers" appeal pursuant to RSA 77:25, the department of revenue administration's (DRA) denial of their request for abatement of the RSA 21-J:31 and 33 penalties. The penalties were assessed because the Taxpayers failed to timely file their 1988 interest and dividends tax return and timely pay the tax. For the reasons stated below, the appeal is denied.

The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence presented to the board.

The only information provided by the Taxpayer was the February 18, 1991 letter from their accountants. In the letter, the accountants claimed they were unaware that the Taxpayers had received corporate distributions that were subject to the interest and dividends tax. No other information was provided by the Taxpayers.

The Taxpayers have the burden to show the DRA erred in assessing the penalties. However, the Taxpayers did not provide the board with any information upon which the board could conclude that the noncompliance was excusable under RSA 21-J:31, 33. RSA 21-J:31 states, "This penalty shall not be applied in any case in which the failure was due to reasonable cause and not willful neglect of the Taxpayer." RSA 21-J:33 authorizes the penalty "due to willful neglect or intentional disregard of the laws or rules * * *." Having failed to carry the burden, the board finds the penalties were properly

assessed.

The board is authorized to award costs as in the superior court. RSA 71-B:9; TAX 201.05(c). Cost are awarded where an appeal was frivolously filed or maintained. The board finds the Taxpayers' appeal was frivolously maintained, and therefore assesses costs of \$50 to cover the DRA's time in attending the hearing. The Taxpayers shall pay the \$50.00 to the DRA within 10 days of the clerk's date below, copying the board with a copy of the letter of payment.

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 Andrew J. Wilson, Manager; and the Department of Revenue Administration, Audit Division.

Valerie B. Lanigan, Clerk

Date: December 2, 1992

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