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Massachusetts

Massachusetts Tax Board Abates Penalty For Taxpayer Who Failed to E-File Payments

The Massachusetts Appellate Tax Board (ATB) has ruled that a taxpayer who filed a paper extension application accompanied by a paper check in 2011 met his burden of providing reasonable cause for his failure to remit payment electronically and shouldn't therefore be penalized (*Haar v. Commissioner of Revenue*, Mass. App. Tax Board, No. C315058, promulgated 7/23/14).

The decision is considered important for those taxpayers who don't like to file electronically and have a good compliance history, indicating that they may be able to avoid penalties if they don't file electronically but properly file paper returns or requests for extension.

The commissioner of revenue said that under state statute she has the authority to mandate electronic filing and payment, and to assess penalties if, after notice, a taxpayer fails to comply with the prescribed filing and payment mandates.

The ATB noted in its discussion that while the statute allows for abatement if a taxpayer can show "reasonable cause" for noncompliance, the commissioner maintained that the taxpayer didn't establish reasonable cause because an administrative procedure notice (AP 633) issued by the department provides that the fact that a taxpayer doesn't own a computer or is uncomfortable with electronic data won't support a claim for reasonable cause.

The ATB said in its decision that the revenue commissioner's blanket statement in AP 633 "runs contrary to the treatment of electronic filing and payments requirements by the federal government and other state taxing jurisdictions . . ."

Degree of Care Exercised. In its 24-page decision promulgated July 23, the board found that the appellant, Jonathan Haar, presented credible testimony concerning his consistent practice of avoiding paying bills electronically. The ATB said the facts of the appeal showed that Haar exercised the degree of care that an ordinary taxpayer in his position would have exercised when he made his timely payment by check, contrary to the commissioner's electronic payment mandate. Haar thus met his burden of proving reasonable cause for his failure to remit payment electronically in connection with his extension application for tax year 2010, the ATB said, and granted Haar an abatement of the \$100 penalty imposed by the Massachusetts Department of Revenue.

A spokeswoman for the DOR told Bloomberg BNA July 30 that the revenue department will discuss a possible appeal of the decision with the Attorney General's Office.

Penalties May be Avoided. Richard L. Jones, a partner with the Boston firm of Sullivan & Worcester LLP, told Bloomberg BNA July 30 that the decision appears to indicate that individuals who can establish the fact, as this taxpayer did, that there is a certain distrust of giving information electronically, may be able to avoid related penalties as long as they do everything else in proper compliance through paper filing.

"There is a requirement to file electronically, that doesn't go away," Jones said, "but the board in its decision says we are not going to impose a penalty for failure to file electronically in every case."

It is also encouraging that the ATB is exercising its own discretion as to reasonable cause with regard to whether penalties are appropriate rather than giving wide latitude to the commissioner in how the commissioner wants to enforce her policy, Jones said. The board has in the past been relatively reluctant to overturn a penalty imposed by the commissioner unless the taxpayer prevailed on the underlying tax issue.

The ruling also says the board may be of the generation that can appreciate the difficulties of those who are less comfortable with the use of computers and other new technology, added Jones, who is past chair of the State and Local Tax Committee of the Boston Bar Association.

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*The ATB ruling is at [http://op.bna.com/der.nsf/r?
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