

2018 WL 7501662 (La.Bd.Tax.App.)

Board of Tax Appeals

State of Louisiana

JAMES C. BURNS FORCED PORTION TRUST, PETITIONER

v.

KIMBERLY L. ROBINSON, SECRETARY, DEPARTMENT
OF REVENUE, STATE OF LOUISIANA, RESPONDENT

Docket No. 10479B

December 11, 2018

JUDGMENT

*1 This case came before the Board for hearing on September 12, 2018 on the merits of the petition of the James C. Burns Forced Portion Trust (the “Taxpayer”), with Judge Tony Graphia (Ret.), Chairman, presiding and Board Members Cade R. Cole and Jay Lobrano present. Participating in the hearing were Peter J. Knecht, CPA, for the Taxpayer and Aaron Long, attorney for Kimberly Robinson, Secretary, Department of Revenue, State of Louisiana (the “Secretary”). After the hearing, the matter was taken under advisement. The Board now renders Judgment unanimously in accordance with the written reasons attached herewith.

IT IS ORDERED, ADJUDGED AND DECREED that the Taxpayer's Petition is BE AND IS HEREBY DISMISSED, and that Judgment be rendered in favor of the Secretary and against the Taxpayer.

Judgment Rendered and Signed at Baton Rouge, Louisiana this 11 day of December, 2018.

For the Board

WRITTEN REASONS FOR JUDGMENT

This case came before the Board for hearing on September 12, 2018 on the merits of the petition of the James C. Burns Forced Portion Trust (the “Taxpayer”), with Judge Tony Graphia (Ret.), Chairman, presiding and Board Members Cade R. Cole and Jay Lobrano present. Participating in the hearing were Peter J. Knecht, CPA, for the Taxpayer and Aaron Long, attorney for Kimberly Robinson, Secretary, Department of Revenue, State of Louisiana (the “Secretary”). After the hearing, the matter was taken under advisement. The Board now renders Judgment unanimously in accordance with the following written reasons.

In a document entitled “Petition to Review Denial of Refrmd/Credit,” the Taxpayer appeals the Secretary's assessment of “delinquent penalties” in the amount of \$1,052.50 for the period ending December 31, 2014. At the hearing, the Taxpayer introduced into evidence a Notice of Assessment dated November 1, 2016, by which the Secretary assessed the Taxpayer with the Delinquent Filing penalty described in the Petition. Thus, it is evident from the Petition and the evidence that the Taxpayer is appealing from an assessment. The Taxpayer further does not ask for a waiver of the penalties. Instead, the Taxpayer asserts that the penalties are not due.

The Taxpayer filed a fiduciary return for the tax period ending December 31, 2014 via LDR Form IT-541. Under R.S. 47:103, the Taxpayer was required to file its 2014 fiduciary tax return no later than April 15, 2015.¹ The Taxpayer admitted that its

return was not filed by that date. Nevertheless, the Taxpayer claims that its return was filed pursuant to an extension, and that the return was therefore timely filed.

At the hearing, the Taxpayer introduced a printout of its fiduciary filer account statement as reflected on the Secretary's website. The printout shows an entry with the description "Fiduciary Income Tax," and which is further described as "Print Return" for the tax period at issue. The printout indicates that this item was "Received" on "Sep-17-2015," and indicates a "Status" of "Late-Processed." The Taxpayer further introduced a federal Account Transcript which, according to the Taxpayer, shows that it received a federal extension to file until September 15, 2015. However, the Taxpayer did not provide any evidence of the date on which it mailed its return, such as a certified mailing receipt.

*2 R.S. 47:1602(A) provides for both a late filing penalty and a late payment penalty, stating:

When any taxpayer fails to make and file any return required to be made under the provisions of this Subtitle before the time that the return becomes delinquent or when any taxpayer fails to timely remit to the secretary of the Department of Revenue the total amount of tax that is due on a return which he has filed, there shall be imposed, in addition to any other penalties provided, a specific penalty to be added to the tax.

The Secretary points out that the Taxpayer's evidence, demonstrates at most that the Taxpayer's return was received on September 17, 2015. The Secretary also argues that even if the Taxpayer received a federal extension, it did not follow the proper procedure for receiving a Louisiana extension.

The Board need not decide whether the Taxpayer's alleged federal extension effectively extended the deadline for the Taxpayer to file its Louisiana return. The federal extension relied upon by the Taxpayer would have ended on September 15, 2015. Thus, even if the Board were to accept the Taxpayer's argument, the Taxpayer would still have to show that it filed its return on or before the extended deadline. However, after considering the evidence, especially given the absence of a certified mailing receipt, the Board finds that the Taxpayer has failed to show that its return was filed on or before September 15, 2015. Further, the Taxpayer admitted that its return was not filed by the regular deadline of April 15, 2015. Based on these facts, the Board concludes that the Taxpayer did not timely file its return. Therefore, the Secretary properly assessed the delinquent filing penalty imposed by R.S. 47:1602(A), and the Petition must be dismissed.

Baton Rouge, Louisiana this 11 day of December, 2018.

For the Board

Judge Tony Graphia (Ret.)
Chairman

Footnotes

- 1 Under Act number 661 of the 2016 Regular Session, effective June 17, 2016, the legislature extended the deadline to file to the May 15 following the close of the calendar year.

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