

THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN THE ARIZONA TAX COURT

TX 2015-000012

07/21/2016

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT  
H. Bell  
Deputy

LAWRENCE CONSTRUCTION COMPANY

DOUGLAS S JOHN

v.

ARIZONA DEPARTMENT OF REVENUE

NATALIA ALEXANDROVNA  
GARRETT

MINUTE ENTRY

The Court has considered the Department's Motion for Summary Judgment, filed April 22, 2016, Plaintiff's response, filed May 26, 2016, and the Department's reply, filed June 15, 2016. The Court has also considered Plaintiff's Motion to Withdraw Admissions and Submit Discovery filed May 26, 2016, the Department's response, filed June 15, 2016, and Plaintiff's reply, filed June 27, 2016.

The Court had set oral argument for July 22, 2016 but in preparing for the argument, it has become clear that no argument is needed. That argument is therefore vacated.

Plaintiff seeks the abatement of penalties for the untimely payment of transaction privilege tax and withholding tax. In order for it to be entitled to such relief, Plaintiff bears "the heavy burden of proving both: (1) that the failure to timely file and pay taxes did not result from 'willful neglect,' and (2) that the failure was 'due to reasonable cause.'" *United State v. Boyle*, 469 U.S. 241, 245 (1985).

A.R.S. § 42-1125 sets a similar standard. It provides, in relevant part:

A. If a taxpayer fails to make and file a return for a tax administered pursuant to this article on or before the due date of the return or the due date as extended by the department, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, four and one-half percent of the tax required to be shown on such return

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shall be added to the tax for each month or fraction of a month elapsing between the due date of the return and the date on which it is filed.

...

D. If a person fails to pay the amount shown as tax on any return within the time prescribed, a penalty of one-half of one percent, not to exceed a total of ten percent, shall be added to the amount shown as tax for each month or fraction of a month during which the failure continues, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect.

A.R.S. § 42-1125.

Even without reaching the issue of whether Plaintiff should be relieved from the deemed admission resulting from its failure to respond to Requests for Admissions, the record clearly demonstrates that Plaintiff has not met its burden.

The evidence suggests that two problems contributed to Plaintiff's failure to timely pay the taxes: (1) a problem with Plaintiff's accounting software, and (2) the alleged malfeasance of Plaintiff's CFO, Mr. Lynch.

The problem with Plaintiff's accounting software, however, was either known or should have been known to Plaintiff. To know about a problem with accounting software and do nothing to fix the problem, is not "ordinary business care and prudence."<sup>1</sup>

Neither does any alleged malfeasance by Mr. Lynch entitle Plaintiff to the requested relief. "A corporation acts only through its agents and employees, and it is clear after Boyle that it cannot rely upon those agents or employees, acting within their scope of authority, to escape responsibility for the nonperformance of non-delegable tax duties." *Conklin Bros. of Santa Rosa, Inc. v. U.S.*, 986 F.2d 315 (1993).

That, in another context, the IRS agreed to waive penalties does not obligate Arizona to do so in this context.

The motion to withdraw admissions is moot, as the matter can be resolved without them.

Accordingly, Department's Motion for Summary Judgment is GRANTED.

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<sup>1</sup> Weighing heavily against Plaintiff is the acknowledged fact that, for the months at issue, it made no TPT and withholding payments. Even if the flawed Viewpoint software and/or Mr. Lynch's defalcations resulted in inaccurate numbers, they would have yielded some positive number every month sales were made and employees paid in Arizona, or, if they did not, that should have raised an immediate red flag.