

JONES & SHORT, P.C.
P.O. Box 1128
Andalusia, AL 36420-1128,
DIVISION

§ STATE OF ALABAMA
DEPARTMENT OF REVENUE
§ ADMINISTRATIVE LAW

Taxpayer,

§ DOCKET NO. W. 00-676

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed withholding tax against Jones & Short, P.C. ("Taxpayer") for July through September 1999. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on January 18, 2001. CPAs Calvin Mixon and Phillip Jones represented the Taxpayer. Assistant Counsel Keith Maddox represented the Department.

The issue in this case is whether the penalties in issue should be waived for reasonable cause.

The Taxpayer filed quarterly withholding tax returns with the Revenue Department before July 1999 because it did not withhold more than \$1,000 in any month before that period. See, Code of Ala. 1975, §40-18-74(a).

The Taxpayer paid its employees bonuses in July 1999, which caused its withholding liability in that month to be \$6,242.16. Section 40-18-74(a) requires that if a taxpayer's withholding liability exceeds \$1,000 in either the first or second month of a quarter, the taxpayer shall file a return and pay the tax due by the 15th of the subsequent month, i.e. file monthly returns for the quarter.

The Taxpayer failed to notify its CPAs that its July 1999 withholding liability exceeded \$1,000. Consequently, the CPAs did not file a monthly return for the Taxpayer, and instead filed a quarterly return as usual. The tax due for the quarter was paid with the return. The Taxpayer also subsequently paid interest on the late July payment.

Because it failed to file a monthly return for July 1999, the Department assessed the Taxpayer for the late filing and late payment penalties levied at Code of Ala. 1975, §§40-2A-11(a) and (b). The Taxpayer appealed.

A penalty may be waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h). Reasonable cause includes instances in which a taxpayer acts in good faith. Rev. Proc. 97-003 provides that good faith includes a nonrecurring, honest mistake.

In this case, the Taxpayer was not aware that it was required to file a monthly return for July 1999. The Taxpayer's CPAs were aware of the law, but were not notified by the Taxpayer that it had in excess of \$1,000 in withholding for July 1999. The Taxpayer's failure to file a monthly return for July 1999 was clearly a nonrecurring, honest mistake. The final assessment in issue is accordingly dismissed.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered January 23, 2001.