

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 88-154

RADNEY & MORRIS, P.A.
P.O. Box 801
Alexander City, AL 35010,

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§

Taxpayer.

§

ORDER

The Revenue Department entered a preliminary assessment of withholding tax against Radney and Morris, P.A. ("Taxpayer") for the period January 1, 1985 through December 31, 1986. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on December 6, 1988. Attorneys Tom Radney, Esq. and Larry Morris, Esq. and CPA Bob Zeanah were present on behalf of the Taxpayer. Assistant counsel Mark Griffin appeared for the Department. Based on the evidence submitted by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The relevant facts are undisputed.

The Taxpayer is a professional association located in Alexander City, Alabama and during 1985 and 1986 employed three attorneys and numerous support personnel. The principal attorneys/employees are Tom Radney ("Radney") and Larry Morris ("Morris").

The Taxpayer failed to withhold Alabama income tax from the wages of Radney and Morris during 1985 and 1986, as required by

Code of Ala. 1975, §40-18-71, et. seq. Instead, both parties made individual quarterly estimates pursuant to Code of Ala. 1975, §40-18-82. Radney's 1985 estimated payments were sufficient to pay his personal liability in full for that year. His 1986 estimated payments were insufficient and the balance due was paid with his 1986 return. Morris made one estimated payment in 1985 sufficient to pay his personal liability in full for that year. He failed to make estimated payments in 1986, but rather paid the full amount due along with his 1986 return.

The Department audited the Taxpayer and determined a withholding deficiency based on the Taxpayer's failure to withhold from Radney and Morris and also a temporary employee located in California. However, additional tax was assessed against only the California employee's wages because both Radney and Morris had individually paid all tax due for the subject years. The Department also assessed a 25 percent penalty on the amount that should have been withheld from Radney and Morris, and interest on that amount computed from the due date of each quarterly withholding report to the due date of each year's return. (The preliminary assessment incorrectly states that interest was computed from the due date of the tax to the date of entry of the preliminary assessment.)

The 25% penalty was waived by the Department prior to the administrative hearing and thus is not in issue.¹ The only issue in

¹The penalty in question is levied at §40-18-60(b). That

dispute is whether interest is due, and if so, in what amount.

CONCLUSIONS OF LAW

Code of Ala. 1975, §§40-18-71 through 40-18-80 require that an employer must withhold taxes from an employee's wages and pay over said taxes to the Department. The employer is liable for the tax required to be deducted and withheld, see §40-18-76. On the other hand, income from sources other than wages must be reported by the individual through quarterly estimates pursuant to Code of Ala. 1975, §40-18-82.

In the present case, the Taxpayer admits that tax should have been withheld on the wages paid to Radney and Morris, but argues

section provides that an employer failing to properly withhold "shall be subject to a civil penalty equal to 25 percent . . ." But despite the use of the imperative "shall", Alabama's courts have held that the penalty can be waived if the taxpayer's failure to comply was caused by the Department or did not constitute a breach of duty by the taxpayer. State v. Mack, 411 So.2d 797. The federal courts also allow that a penalty may be waived for "reasonable cause". Whether reliance of the advice of an accountant or lawyer constitutes reasonable cause must be decided on the facts of each particular case, see United States v. Boyle, 105 S.Ct. 687, at 692-694.

that no interest should be charged because Radney and Morris both paid their individual liabilities in full either during the year through quarterly estimates or at the end of the year with each year's return.

However, interest is due on all tax that was not properly withheld, and should be computed beginning on the due date of each quarterly report, see §§40-1-44 and 40-18-80(g), and also State v. Pollock, 38 So.2d 870, 876. However, the withholding deficiencies on which the interest should be computed should be reduced by those quarterly payments made by Radney and Morris during the subject years. That is, the Taxpayer should be allowed credit for the amounts paid individually by Radney and Morris and should be charged interest on only the net amount owed and unpaid (withholding liability less any quarterly estimate payments) during the subject years.

The Department is hereby directed to recompute the interest due on the assessment as directed above, by reducing the withholding deficiencies upon which the interest should be computed by the quarterly estimates made individually by Radney and Morris as of the date said estimate payments were received by the Department.

Thereafter, the assessment should be made final.

Entered this 4th day of January, 1989.

BILL THOMPSON
Chief Administrative Law Judge