

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
MICHIGAN TAX TRIBUNAL

Seneka Holdings, Inc,  
Petitioner,

v

MTT Docket No. 16-000221

Michigan Department of Treasury,  
Respondent.

Tribunal Judge Presiding  
Preeti P. Gadola

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

**INTRODUCTION**

On August 5, 2016, Respondent filed a motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. More specifically, Respondent contends that Petitioner failed to make estimated quarterly payments and failed to timely file its annual return. Respondent further contends that Petitioner's failures are not due to reasonable cause and a penalty waiver is not appropriate.

On September 15, 2016, Petitioner filed a response to the Motion. Petitioner contends that it is entitled to a penalty waiver as its failures were due to reasonable cause. In addition, Petitioner contends that additional factual development at hearing is necessary and the Tribunal should deny the Motion.

On November 4, 2016, the Tribunal conducted Oral Arguments on the Motion. The Tribunal has reviewed the Motion, response, transcript, and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition is warranted at this time.

### **RESPONDENT'S CONTENTIONS**

In support of its Motion, Respondent contends that Petitioner cannot demonstrate that its failure to timely pay quarterly installments and timely file its tax returns was due to reasonable cause. Petitioner alleges in the Petition that its failure was due to advice from its CPA; however, discovery shows that the CPA properly advised Petitioner and Petitioner still failed to make quarterly payments. This is also only one factor to consider. Respondent also cites *United States v Boyle*,<sup>1</sup> to indicate that a taxpayer may not abdicate its responsibility to timely make payments and still be considered to have exercised ordinary business care.

With regard to the filing of its return, Respondent contends that it is undisputed that Petitioner failed to comply with the April deadline nor has Petitioner established reasonable cause. Petitioner points to its Tax Matters Member, however, he was removed for several months prior to this deadline. Respondent also contends that Petitioner's argument that this was its first year to file is without merit.

### **PETITIONER'S CONTENTIONS**

In support of its response, Petitioner contends that reasonable cause exists to waive the penalties. In looking to the factors set forth by Respondent's Bulletin, Petitioner contends that it acted with ordinary business care and prudence by designating David Maciejewski as the person responsible for tax matters and hired Al Stanek to advise Mr. Maciejewski. "It is undisputed that Maciejewski simply did not pay the taxes."<sup>2</sup> Petitioner contends that it took immediate steps to deal with Maciejewski and hired additional CPAs to continue to advise it regarding its CIT tax liability.

---

<sup>1</sup> *United States v Boyle*, 469 US 241; 105 S Ct 687 (1985).

<sup>2</sup> Response at 6.

Petitioner contends that the facts show that the failure to timely file “was the result of circumstances outside of Petitioner’s control.”<sup>3</sup> Specifically, Petitioner cites to the factors with regard to “unavoidable absence” and contends that although Maciejewski was not physically absent, he was ignoring tax matters and “possibly engaging in other misconduct.”<sup>4</sup> Petitioner contends, based upon the doctrine of *respondeat superior*, that Maciejewski’s actions go beyond the scope of his employment.

Petitioner also relies upon the fact that 2014 was the first year in which Petitioner had CIT liability. Petitioner contends it took reasonable and prudent steps to comply with the tax obligations. However, it had a breakdown in its accounting and financial system, namely, because Maciejewski ignored the CPA’s advice and failed to make payments and necessary filings. Petitioner concludes that it did not engage in willful neglect and that its failures were due to reasonable cause.

### **STANDARD OF REVIEW**

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.<sup>5</sup> In this case, Respondent moves for summary disposition under MCR 2.116(C)(10).

Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the

---

<sup>3</sup> Response at 4.

<sup>4</sup> Response at 7.

<sup>5</sup> See TTR 215.

moving party is entitled to judgment as a matter of law.<sup>6</sup> In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.<sup>7</sup>

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.<sup>8</sup> The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.<sup>9</sup> The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.<sup>10</sup> Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.<sup>11</sup> If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.<sup>12</sup>

### CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion under MCR 2.116 (C)(10) and finds that granting the Motion is warranted. The Tribunal finds, as discussed fully below, that Petitioner has failed to establish that its failure to make quarterly payments and timely file its annual return was due to reasonable cause and the penalties imposed are proper.

---

<sup>6</sup> See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

<sup>7</sup> See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

<sup>8</sup> See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

<sup>9</sup> See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

<sup>10</sup> *Id.*

<sup>11</sup> See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

<sup>12</sup> See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

The issue presented in this case is whether the penalty shall be waived under MCL 205.24(4) which states:

If a return is filed or remittance is paid after the time specified and it is shown to the satisfaction of the department that *the failure was due to reasonable cause and not to willful neglect*, the state treasurer or an authorized representative of the state treasurer shall waive the penalty prescribed by subsection (2). [Emphasis added.]

In this case there are two failures at issue: (1) the failure to make estimated quarterly payments on its 2014 CIT liability, and (2) the failure to timely file its 2014 CIT return. MCL 206.681 sets forth the requirement that “a taxpayer that reasonably expects liability for the year to exceed \$800.00 shall file an estimated return and pay an estimated tax for each quarter of the taxpayer’s tax year.” MCL 206.685 sets forth the filing deadline for the filing of the tax return which, in Petitioner’s case, was April 30, 2015. The Tribunal finds that there is no dispute that Petitioner neither made its quarterly payments during 2014 nor timely filed its annual return by April 30, 2015. The dispute, rather, is regarding whether the failures were due to reasonable cause, under MCL 205.24(4), as quoted above.

In that regard, Respondent has established rules and R 205.103(7) sets forth the following examples that constitute “reasonable cause” for a penalty waiver:

- (a) The delay in filing or payment is caused by the prolonged unavoidable absence of the taxpayer responsible for filing and the taxpayer who is precluded, due to circumstances beyond the taxpayer's control, from making alternate arrangements for filing and paying.
- (b) The delay in filing or payment is caused by the destruction, by fire or other casualty, of the taxpayer's records or the taxpayer's business if the destroyed records directly related to and prevented timely compliance.
- (c) The delay arose from the taxpayer's inability to obtain the necessary records or information due to reasons beyond the taxpayer's control. The taxpayer shall explain why the records are needed to comply, why the records are unavailable, other avenues explored to secure the information, and why the information is not estimated.

- (d) The taxpayer receives erroneous written information from a department employee who responds to the taxpayer's request and the taxpayer provided all complete and relevant information. The erroneous written information directly relates to and prevents the taxpayer from complying with state tax obligations.
- (e) The filing of a return or payment of tax is delayed in delivery by the United States post office or is filed or paid in the wrong office of the department.
- (f) A bank error that is the sole cause of the failure to pay.

These examples are not intended to be an exhaustive list and the R 205.1013(8) additionally provides factors to be considered in determining whether reasonable cause exists. The factors that may be considered for reasonable cause are:

- (a) The compliance history of the taxpayer.
- (b) The nature of the tax.
- (c) The taxpayer's financial circumstances, including the amount and nature of the taxpayer's expenditures in light of the income the taxpayer, at the time of the expenditures, could reasonably expect to receive before the due date prescribed for paying the tax.
- (d) The taxpayer was incorrectly advised by a tax advisor who is competent in Michigan state tax matters after furnishing the advisor with all necessary and relevant information and the taxpayer acted reasonably in not securing further advice.
- (e) The taxpayer's accounting and financial system that is designed to ensure timely filing breaks down due to unavoidable circumstances and, upon discovery, the taxpayer promptly complies.
- (f) The death or serious incapacitating illness of the taxpayer or the person responsible for filing the return or making the payment or a member of his or her immediate family.
- (g) Lack of funds to make timely payment.
- (h) A taxpayer's reliance on an employee or agent to file the return or make the payment.

Here, Petitioner relies upon several factors to contend that its failures should constitute “reasonable cause” to justify a penalty waiver. First Petitioner contends that it exercised

ordinary business care and prudence. Petitioner contends that by designating Maciejewski as the Tax Matters Member and hiring Stanek to advise him regarding the payment of taxes, this constituted ordinary business care. As Respondent properly pointed out the US Supreme Court in the *Boyle* case held that “[t]he failure to make a timely filing of a tax return is not excused by the taxpayers reliance on an agent, and such reliance is not ‘reasonable cause’ for a late filing.”<sup>13</sup> More specifically, the Tribunal finds that the taxpayer in *Boyle* retained an attorney who advised the taxpayer that a tax return was required but did not specifically indicate the deadline. The taxpayer failed to timely file due to the lack of a reminder from his attorney because of a mistake in the attorney’s calendar. The taxpayer’s contention was that his reliance upon the attorney was “reasonable cause” for his untimely return. The Court found that, unlike relying upon erroneous advice of counsel regarding a question of law, the failure to timely file a return based upon a reliance on an agent is not reasonable cause given that there is “no special training or effort [needed] to ascertain a deadline and make sure that it is met.”<sup>14</sup> The Tribunal finds that while this case interprets the federal provision,<sup>15</sup> the statutory language is mirrored in Michigan law, and as such, this case is found to be on point.<sup>16</sup> Specifically, the Tribunal finds that the facts at issue are substantially similar as Petitioner contends that its reliance upon Maciejewski resulted in its failure to comply. The Tribunal finds that the reliance upon Maciejewski, or its CPAs, was not ordinary business care because Petitioner could have, at a minimum, independently determined the deadline for filing the annual return and the timely filing is not excused by reliance upon an agent under *Boyle*. Moreover, there is no dispute that Maciejewski was

---

<sup>13</sup> *Boyle*, 469 US at 252.

<sup>14</sup> *Id.*

<sup>15</sup> IRC 6651(a)(1).

<sup>16</sup> See *United Artist Corp v Dep’t of Treasury*, 66 Mich App 289; 238 NW2d 841 (1975).

removed from office in August of 2014.<sup>17</sup> This is prior to the deadline for the filing of the annual return (April 2015) and some of the estimated quarterly payments. As such, the Tribunal does not find Petitioner's argument to be persuasive.

Petitioner also contends that the failures were outside of its control and due to prolonged and unavoidable absence. Petitioner admits that Maciejewski was not physically absent from Petitioner. However, Petitioner contends that it was not able to control the circumstances because it was unaware of his misconduct and failures to pay. The Tribunal, again, does not find this to be a persuasive argument. Petitioner, in part, relies upon the doctrine of *respondeat superior* to contend that Maciejewski's actions must be considered separate from Petitioner. Specifically, Petitioner cites to *Bradley v Stevens*,<sup>18</sup> which states:

Under the doctrine of *respondeat superior* there is no liability on the part of an employer for torts intentionally or recklessly committed by an employee beyond the scope of his master's business.<sup>19</sup>

Petitioner fails, however, to address what intentional tort was committed by Maciejewski. More importantly, the Tribunal finds that even if Maciejewski's failure to pay the taxes at issue was an intentional tort, it is clearly not outside the scope of Petitioner's business or the scope of Maciejewski's employment. Rather, Maciejewski was specifically designated to handle the tax matters and the payment of taxes, or failure to pay, was clearly within the scope of his employment. Also, as noted above, Petitioner continued to miss its tax deadlines even after Maciejewski's removal. Therefore, Petitioner has failed to demonstrate that the failure to remit quarterly payments or timely file its annual return was outside its control.

---

<sup>17</sup> Response at 2.

<sup>18</sup> *Bradley v Stevens*, 329 Mich 556; 46 NW2d 382 (1951).

<sup>19</sup> *Id.* at 562.

With regard to the factors that may be considered, but do not constitute reasonable cause on their own, Petitioner again, has failed to demonstrate that its failures were the result of reasonable cause. Petitioner was a newly formed entity and 2014 was the first year it was required to pay CIT. Thus, looking at factor (b)<sup>20</sup> it is arguable that Petitioner did not know its estimated liability or requirement to pay. However, it is clear that Maciejewski was not unaware of the requirements but, rather, ignored the requirements and recommendation of Stanek to file the estimated payments.<sup>21</sup> As properly indicated by Respondent, it is not reasonable to assume that Petitioner believed quarterly payments were not required as quarterly payments are required if the estimated tax due exceeds \$800, and Petitioner's actual liability exceeded \$100,000.<sup>22</sup> Thus, the Tribunal finds this factor is not met. Petitioner also appears to rely upon factor (d).<sup>23</sup> Again, however, Petitioner received proper advice from its CPA Stanek regarding making required quarterly payments and Maciejewski, Petitioner's agent, ignored the advice and simply failed to make the required quarterly payments. Thus, the Tribunal finds that Petitioner was not incorrectly advised by its tax advisor, and this factor is not met.

Petitioner also references factor (e)<sup>24</sup> stating that its accounting and financial system "broke down where Stanek advised Maciejewski regarding required tax payments and filings and Maciejewski simply ignored that advice, failed to make payments and failed to make necessary filings."<sup>25</sup> Even if this is the type of "system" contemplated by Respondent's factors, the Tribunal finds that Petitioner has failed to establish that it meets factor (e) given that it also

---

<sup>20</sup> The nature of the tax.

<sup>21</sup> Response at 10.

<sup>22</sup> See MCL 206.681; Tr. at 26.

<sup>23</sup> The taxpayer was incorrectly advised by a tax advisor who is competent in Michigan state tax matters after furnishing the advisor with all necessary and relevant information and the taxpayer acted reasonably in not securing further advice.

<sup>24</sup> The taxpayer's accounting and financial system, that is designed to ensure timely filing, breaks down due to unavoidable circumstances and, upon discovery, the taxpayer promptly complies.

<sup>25</sup> Response at 10.

requires that “upon discovery, the taxpayer promptly complies.” Here, there is no dispute that Petitioner was aware of problems with Maciejewski, including his failure to pay taxes, prior to his removal in August 2014. Thus, the Tribunal finds that Petitioner discovered the breakdown in the system, at minimum, as of August 2014. Petitioner nevertheless did not make estimated quarterly payments for the remainder of 2014 as required by MCL 206.681 and its annual return that was due in April 2015, yet the return was not filed until September 2015.<sup>26</sup> The Tribunal is unable to find that these facts demonstrate prompt compliance, and this factor is not met.<sup>27</sup> Overall, the Tribunal finds that Petitioner has not demonstrated reasonable cause under the factors.

The Tribunal finds that Respondent does not dispute that Petitioner’s failures were not the result of willful neglect. The Tribunal agrees, however, it is clear from the statutory language that a penalty waiver is not required merely if the failures are not the result of willful neglect. Rather, MCL 205.24(4) Petitioner must show that “the failure was due to reasonable cause and not to willful neglect.” Here, as indicated above, the Tribunal finds that Petitioner has failed to establish that its failures were due to reasonable cause, and as such, a penalty waiver is not appropriate.

In addition to the above, Petitioner contends that the Tribunal should deny Respondent’s Motion on the basis that a reasonableness standard should be determined based upon testimony at hearing. However, the Tribunal finds that the standard for granting a motion under MCR 2.116(C)(10) requires the Tribunal to look to all pleadings, depositions, admissions, and documentary evidence and that the burden shifted to Petitioner to demonstrate a genuine issue of

---

<sup>26</sup> Response at 2.

<sup>27</sup> The Tribunal further finds these facts demonstrate that Petitioner does not have a history of compliance under factor (a), given the failures to make quarterly payments and timely file its return, even after the removal of Maciejewski.

disputed fact exists.<sup>28</sup> Here, the Tribunal primarily relied upon the facts as set forth by Petitioner and does not find that Petitioner has demonstrated a genuine issue of fact remains. Moreover, Petitioner was not entitled to rely on mere allegations or denials in its response.<sup>29</sup> Petitioner failed to present affidavits or other documentary evidence establishing the existence of a material factual dispute, and as a result, the Tribunal finds that Respondent's Motion shall be granted.<sup>30</sup>

### **JUDGMENT**

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that Assessment Number UO16696 is AFFIRMED.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

### **APPEAL RIGHTS**

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.<sup>31</sup> Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.<sup>32</sup> A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.<sup>33</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>34</sup>

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."<sup>35</sup> A copy of the claim

---

<sup>28</sup> See *Quinto, supra*. See also *Neubacher, supra*.

<sup>29</sup> See *McCart, supra*.

<sup>30</sup> See *McCormic, supra*.

<sup>31</sup> See TTR 261 and 257.

<sup>32</sup> See TTR 217 and 267.

<sup>33</sup> See TTR 261 and 225.

<sup>34</sup> See TTR 261 and 257.

<sup>35</sup> See MCL 205.753 and MCR 7.204.

must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>36</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>37</sup>

Entered: February 2, 2017

By Preeti P. Gadola

---

<sup>36</sup> See TTR 213.

<sup>37</sup> See TTR 217 and 267.