

VALIDATA COMPUTER AND
RESEARCH CORPORATION
P.O. BOX 4720
MONTGOMERY, AL 36103-4720,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. W. 12-1276

FINAL ORDER

The Revenue Department denied a petition for refund of withholding tax penalties requested by Validata Computer & Research Corporation (“Taxpayer”). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on March 19, 2012. The Taxpayer’s owner, Warren Phillips (“Phillips”), and his representative, Will Sellers, attended the hearing. Assistant Counsel Gwendolyn Garner represented the Department.

The Taxpayer is located in Montgomery, Alabama and is in the computer software development business. Phillips has owned and operated the business since the late 1970’s. The Taxpayer primarily develops and sells software to soft drink bottlers, vending companies, snack food distributors, and others that regularly distribute their products to customers. The Taxpayer’s software allows those businesses to real time monitor their sales, inventory, etc.

The Taxpayer’s business was negatively impacted by the 9/11 terrorist attacks. Hurricane Katrina also hurt the Taxpayer’s business because it had a number of customers along the Gulf Coast. Those customers were further disrupted by the April 2010 BP oil spill in the Gulf. In part due to the above disasters, the Taxpayer’s business has declined

considerably since 2001. It employed 38 people in 2001, but now employs only 10.

Due to its financial difficulties, in 2008 the Taxpayer became delinquent in filing monthly withholding returns and paying its withholding taxes to the Department.

In August 2010, the Taxpayer and Matt Jackson, a collection agent with the Department's Collection Services Division, agreed on a payment plan by which the Taxpayer would pay its past due withholding taxes. The Taxpayer made an initial \$4,000 payment under the plan in August 2010. It thereafter paid \$2,500 every month through October 2011, and made a final payment of \$1,421 in November 2011 that paid in full the delinquent amount due.

When Phillips agreed to the payment plan in August 2010, he also explained to the collection agent that he was having trouble timely paying his withholding tax because he had an extreme cash flow problem. To assist the Taxpayer, the agent volunteered to go to the Taxpayer's office and pick up the Taxpayer's monthly withholding return and payment on or around the due date each month. He did so from mid-2010 through at least January 2013.

Phillips also asked the collection agent if any of the penalties could be waived. The agent correctly explained that the delinquent amount due, including the penalties, had to be paid in full, but that after the amount was paid the Taxpayer could petition for a refund of the penalties.

In April 2012, the Taxpayer petitioned for a refund of the penalties it had paid to the Department pursuant to the payment plan. The periods involved were May and July 2008; all the months in 2009 except February; March, June, September, and December 2010;

and January, February, April, August, September, and October 2011.

The Department denied the refund petition by letter dated April 18, 2012 – “while extreme economic conditions are a burden all employers face, this is clearly not covered under Department Regulations.” The denial letter further notified the Taxpayer that amounts were also due for November 2011 through February 2012.

In July 2012, the Department entered two withholding tax final assessments against the Taxpayer, one for November 2011 and the quarter ending December 31, 2011, and the other for January and February 2012. The tax and interest due totaled \$.52 and \$3.03, respectively, whereas the assessed penalties totaled \$515.72 and \$342.82, respectively. The Department subsequently satisfied those final assessments through garnishment.

A continuing problem the Department has had with the Taxpayer over the past few years is that the Taxpayer has not filed its withholding returns electronically, as required by Alabama law. Taxpayers that have a monthly withholding liability of over \$1,000 a month have been required to file returns electronically since October 1, 2006.

Phillips testified at the March 19 hearing that he did not file electronically because he understood that if he did so, he would also be required to pay electronically at the same time, and that would have caused problems due to his on-going cash flow problems. The Taxpayer began filing returns electronically in December 2012 or early this year, but still pays by check due to its cash flow problems.

A penalty may be waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h). The Department is correct that the Department’s regulations do not identify economic hardship as a reasonable cause to waive a late payment penalty. See generally, Reg. 810-

1-1-.33.01; Rev. Proc. 97-003. But the reasonable cause examples listed in the above regulation are not all inclusive.

The Taxpayer's continuing cash flow problems did not constitute reasonable cause, but I otherwise find reasonable cause to waive the penalties for the months after August 2010. The Taxpayer began its payment plan in that month, and it faithfully made the monthly payments until the past due amounts were paid in full. The revenue agent also began picking up the Taxpayer's monthly withholding returns and payments in August 2010, and has continued doing so since that time. The Taxpayer is to date current in paying its withholding tax, has cooperated with the Department, and has made a good faith effort to pay all past due and current taxes since August 2010.

The Taxpayer has paid penalties totaling \$3,620.72 since August 2010. Those penalties are waived for reasonable cause under the circumstances. The Department is directed to refund the Taxpayer the above amount, plus applicable interest. Judgment is entered accordingly.

I also commend Matt Jackson, the Department's collection agent, for working with Phillips to insure that the Taxpayer was able to pay its delinquent withholding taxes. It is clear from Phillips' testimony that Jackson was focused on helping the Taxpayer stay in business and pay off the delinquent amounts due.

Phillips: Yes, sir. And (Jackson) also said, it's not our job to hurt our taxpayer's businesses. It's not our job to see everything we can do to penalize them. It's our job to see if we can get the money collected without putting you out of business. And so that's just the type of person he is. So that's the mentality we were in.

Mr. Sellers: And during this period of time, you had conversations with Mr. Jackson; is that correct?

Phillips: Every month.

Mr. Sellers: And during those conversations, he would instruct you to make these payments.

Phillips: Yes, sir. I know everybody sort of makes fun about I'm from the government and I'm here to help you, or I'm from the IRS and I'm here to help you. Well, when Matt Jackson walked in that door and he said, I'm from the Alabama Department of Revenue and I'm here to help you, he really was.

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Phillips: . . . He said I know – I said, wouldn't I be better off paying the taxes first and then addressing the penalties. He said, no. The way we like to see it done is you pay it all in, and once you pay it in and you're zeroed out, and you've done everything you said you were going to do, then you request a refund. And I had the correspondence with him.

And, you know, he didn't promise we were going to get a refund. But the clear indication was, you know, if you're a good person and you pay – you do what you say you're going to do and it's all done in good faith and you're earnest about it – I think we were all of those things – the Department would consider the refund.

(T. 40, 41; 48, 49; 53, 54).

Contrary to public perception, I have seen numerous examples over the years of Revenue Department personnel going above and beyond the call of duty in helping taxpayers. Jackson's work with the Taxpayer in this case is another fine example of a Department employee serving the public.

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

Entered April 19, 2013.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Gwendolyn B. Garner, Esq.
William B. Sellers, Esq.
Neal Hearn