

06-1664
Income Tax
07/30/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	06-1664
v.)		
	)	Account No.	#####
TAXPAYER SERVICES DIVISION OF)		
THE UTAH STATE TAX	)	Tax Type:	Income Tax
COMMISSION,	)	Audit Period:	2005
)		
Respondent.	)	Judge:	Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *pro se*

For Respondent: RESPONDENT REPRESENTATIVE, from the Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on March 20, 2007.

In a letter dated December 13, 2006, Respondent notified Petitioner that it had denied his request for a wavier of penalties and interest for the 2005 tax year. Respondent gave as reasons for the denial a history of late filing, late payment, or both, and a lack of information establishing reasonable cause.

On December 26, 2006, Petitioner submitted a Petition for Redetermination. It said Petitioner had been unaware there was no extension for payment available for Utah State income tax. He said he had been relying on an accountant who had not advised him properly regarding extensions. He appealed Respondent's refusal to waive the penalty.

WITNESS, CPA, was Petitioner's accountant. WITNESS submitted a letter on Petitioner's behalf. It said Petitioner had received refunds in the five years preceding the 2005 tax year. For the 2005

year, Petitioner had invested in a sub S corporation that delayed providing Petitioner a K-1 until September 2006. WITNESS said a federal extension had been filed, thinking this applied to State income tax as well. According to WITNESS, Petitioner was unaware of the State's requirements regarding extensions and payment to avoid penalties. WITNESS said the sub S corporation created the liability by issuing the K-1 late.

Respondent said it reviewed Petitioner's history. Petitioner's 2001 return was filed August 16, 2002. Petitioner had not made a timely prepayment and was penalized \$\$\$\$\$.

Respondent received a \$\$\$\$\$ prepayment for the 2002 tax year. It was not sufficient, but did reduce the extension penalty. Petitioner paid the \$\$\$\$\$ extension penalty in December of 2003.

In 2003 and 2004, the returns were filed late. However, there were refunds due, so Respondent did not assess penalties.

Petitioner filed his 2005 return on October 16, 2005. Petitioner did not make a prepayment. The extension penalty is \$\$\$\$\$. The late payment penalty is \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-1-401 (1) (a) "The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return."

Utah Code Ann. §59-1-401 (2) "The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:

••••

(b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);

Utah Code Ann. §59-1-401(11) "Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part."

Utah Code Ann. § 59-10-539.

(1) In case of failure to file an income tax return and pay the tax required under this chapter on or before the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is

due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return a penalty as provided in Section 59-1-401. For the purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) If any part of any deficiency in tax imposed by this chapter, as defined by Section 59-10-523, is due to negligence or intentional disregard of rules, but without intent to defraud, a penalty shall be assessed, collected, and paid as provided in Section 59-1-401 in the same manner as if it were an underpayment.

DISCUSSION

Petitioner was penalized in 2002 for the 2001 tax year. He made prepayment for the 2002 tax year. Though it was insufficient, it did reduce the extension penalty. Petitioner's assertion that he did not know about the need to make a prepayment is not consistent with what occurred in 2002 and 2003.

Petitioner was late in filing his 2003 and 2004 returns. While he received refunds for both years, his tardiness in filing was a factor Respondent included as a basis for its decision.

DECISION AND ORDER

Petitioner's previous experience with late filing penalties was sufficient to put him on notice that prepayment was required. He has a history of late filing. The Commission sustains the penalties in this case. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West

Appeal No. 06-1664

Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2007.

R. Spencer Robinson
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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