

07-0084
Income
Signed 05/16/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	07-0084
)		
v.)		
)	Account No.	#####
AUDITING DIVISION OF THE)		
UTAH STATE TAX COMMISSION,)	Tax Type:	Income
)		
Respondent.)	Judge:	Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Manager, Income Tax Auditing
RESPONDENT REPRESENTATIVE 2, Auditor

STATEMENT OF THE CASE

This matter came before the Commission for a Telephone Status Conference on May 10, 2007 and was converted to the Initial Hearing. Petitioner is appealing an audit deficiency of Utah individual income tax in the amount of \$\$\$\$\$, penalties in the amount of \$\$\$\$\$ and the interest accrued thereon for tax year 2001. The penalties assessed were 10% failure to file and 10% failure to pay penalties pursuant to Utah Code Sec. 59-1-401).

APPLICABLE LAW

An income tax return with respect to the tax imposed by this chapter shall be filed by: (1) every resident individual, estate, or trust required to file a federal income tax return for the taxable year; . . . (Utah Code Sec. 59-10-502(1).)

Except as otherwise provided in this section, the amount of any tax imposed by this chapter

shall be assessed within the three years after the return was filed . . . (3) The tax may be assessed at any time if: (a) no return is filed. (Utah Code Sec. 59-10-536 (1) & (3).)

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 Sec. 59-1-401(11).

DISCUSSION

Petitioner asks that the entire audit deficiency be abated. She indicates that although a 1099 had been issued to her in the amount of \$\$\$\$\$, she had incurred deductible business expenses. She also argued that she should not have been issued a 1099 in that amount. She states that COMPANY A, the company that issued the 1099 should have deducted the expenses it had retained and only issued the 1099 in the amount actually paid to her. It was her position that she had not earned enough income to have tax liability in 2001. She had filed bankruptcy during 2001, lost her residence and had to relocate her business. She states that her tax advisor told her that she did not have enough income to be required to file a state or federal return. She relied on this information and did not file the return.

In addition, Petitioner points out that she was not contacted by the Tax Commission about filing the return until the Statutory Notice was mailed to her in December 2006. At this point she does not have records to prepare the 2001 return and felt it was unfair of the Auditing Division to audit years that far back. She indicated that she would not now file a return for that year.

Respondent's representative stated that the 1099 information indicated Petitioner had received taxable income in the amount of \$\$\$\$\$. This meant that she was required to file a federal and state return for that year. Had Petitioner filed the returns she could have claimed deductions for business expenses against the income reported on the 1099. Respondent's representative indicated that Petitioner could now file returns for

the 2001 year claiming the deductions, which may then replace the audit deficiency. Regarding the penalty, Respondent's representative did not have Petitioner's account history, so could not refute that this was a first time error.

Upon review of the information presented in this matter, the Commission would point out to Petitioner that when a return has not been filed there is no statutory limitation on an audit assessment. For those instances where a return was filed there is a limitation, generally three years. As Petitioner had received a 1099 for \$\$\$\$\$ she was required to file returns and failed to do so for 2001. If the expenses were as she represented and if she had properly claimed them on the federal return she may not have had state tax liability, but this does not mean she was not required to file a return. If Petitioner decides that she is willing to file state and federal returns for that year she may be able to deduct her expenses. As Petitioner indicated that she did not want to file proper returns, the Tax Commission sustains the assessment of tax.

Interest is assessed when taxes are not paid or underpaid pursuant to statute. In this case the interest accrues from the date the 2001 taxes should have been paid, April 15, 2002. Interest is generally waived only in the event an error on the part of the Tax Commission or Tax Commission employee caused the late filing or underpayment. There is no such showing in this case. The interest arose because Petitioner failed to file a return that she was required to file.

Considering waiver of the penalties, Petitioner did not think she needed to file tax returns based on advice from tax advisors and that she had earned so little money that year after expenses. Had she filed proper returns she may not have had a tax liability. There were some other extraordinary circumstances that year with the bankruptcy, loosing her house and having to move her business. The Commission concludes from the totality of the circumstances there is sufficient reasonable cause for waiver of the penalties.

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DECISION AND ORDER

Based upon the foregoing, the Commission sustains the audit for tax year 2001 as it pertains to the Utah individual income tax and interest. The Commission finds that sufficient cause has been shown to justify a waiver of the penalties for tax year 2001. 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
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.

Jane Phan
Administrative Law Judge

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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

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

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