

07-0792
Income Tax
Signed 03/05/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	INITIAL HEARING ORDER
Petitioner,)	
v.)	Appeal No. 06-0792
)	Account No. #####
)	
AUDITING DIVISION OF THE)	Tax Type: Income Tax
UTAH STATE TAX COMMISSION,)	Audit Period: 1999 & 2002
)	
Respondent.)	Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *pro se* via telephone

For Respondent: RESPONDENT REPRESENTATIVE, Auditing Division

STATEMENT OF THE CASE

On May 4, 2006, Respondent sent Petitioner a Statutory Notice of Audit Change for the above noted tax years. Petitioner responded on May 16, 2006 by filing a Petition for Redetermination. The parties participated in a status conference on December 6, 2006. During the status conference the parties agreed to convert it to an initial hearing. At issue is Petitioner's request for waiver of the 10% failure to file and 10% failure to pay penalties sought by the Respondent.

APPLICABLE LAW

59-10-502. Persons required to file returns.

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; and

(2) every nonresident individual, estate, or trust having federal gross income derived from sources within the state for the taxable year and required to file a federal income tax return for such taxable year.

59-10-514. Place and time for filing returns.¹

The income tax return required by this chapter shall be filed with filed with commission on or before the 15th day of the fourth month of the close of the taxpayer's taxable year. A person required to make and file a return under this chapter shall, without assessment, notice, or demand, pay any tax due thereon to the commission or before the date fixed for filing such return (determined without regard to any extension of time for filing the return).

59-1-401. Offenses and penalties - Rulemaking authority - Statute of limitations - Commission authority to waive, reduce, or compromise penalty or interest.

(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.

.....

(2) The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:

(a) failure to pay any tax, as reported on a timely filed return;

59-1-401(11) Waiver

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.

¹ Effective during 1999 and 2002

DISCUSSION

The facts, acknowledged by Petitioner, are that she did not file a return for the 1999 tax year as required, nor timely submit the required payment. Following the audit, she filed a return for 1999.

She agrees with the audit changes made by the Respondent for the 2002 tax year, based on changes made to her federal return. She did not file an amended state return for 2002 until after the audit.

Petitioner has now paid the tax and interest for 1999 and 2002. She requests a waiver of the penalties. She states she was eighteen years of age and just out of high school when she did not file the 1999 tax return.

Respondent took the position that penalty and interest are in statute. The 1999 return was not filed. The tax for 1999 was not timely paid. An amended 2002 return was not timely filed. The additional tax was not timely paid. The penalties are fixed by statute. Respondent asked the penalties be sustained, but noted its primary concern, filing and payment of taxes, was resolved.

ORDER

Based upon a lack of evidence regarding compliance history, the Commission grants Petitioner's request for a waiver of the penalty for the 1999 year, as a first time filing error. The Commission sustains the penalties for 2002. 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

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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.

R. Spencer Robinson
Administrative Law Judge

BY ORDER OF THE COMMISSION.

The undersigned have reviewed the Initial Hearing Order and 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