

11-1318
CENTRALLY ASSESSED PROPERTY
TAX YEAR: 2011
SIGNED: 07-20-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON
EXCUSED: M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 11-1318 Account No. ##### Tax Type: Property Tax/Centrally Assessed Penalty Appeal Tax Year: 2011 Judge: Phan
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Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REP.
For Respondent: RESPONDENT REP. 1 Analyst, Property Tax Division
 RESPONDENT REP. 2, Analyst, Property Tax 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 Sec. 59-1-502.5, on July 18, 2011. Petitioner (the "Property Owner") is appealing the penalty assessed pursuant to Utah Code Sec. 59-2-207, for the Property Owner's late filing of the annual property tax report.

APPLICABLE LAW

A person, or an officer or agent of that person, owning or operating property described in Subsection (1)(b) shall file with the commission, on a form prescribed by the commission, a sworn statement on or before March 1 of each year. (Utah Code Sec. 59-2-207(1)(a).)

Except as provided in Subsection (3)(c), the commission shall assess a person a penalty as provided in Subsection (3)(b), if the person, or an officer or agent to that person, fails to file: (i) the statement required

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under Subsection (1)(a) on or before the later of: (a) March 1; or (B) if the commission allows an extension under Subsection (1)(c) for filing the statement, the day after the last day of the extension period or (ii) any other information the commission determines to be necessary . . . (Utah Code Sec. 59-2-207(3)(a).)

The penalty described in Subsection (3)(a) is an amount equal to the greater of: (i)10% of the person's estimated tax liability under this chapter for the current calendar year not to exceed \$50,000; or (ii) \$100. (Utah Code Sec. 59-2-207(3)(b).)

Notwithstanding Subsections (3)(a) and (4), the commission may waive, reduce, or compromise a penalty imposed under this section if the commission finds there are reasonable grounds for the waiver, reduction or compromise. (ii) If the commission waives, reduces, or compromises a penalty under Subsections (3)(c)(i), the commission shall make a record of the grounds for waiving, reducing, or compromising the penalty. (Utah Code Sec. 59-2-207(3)(c).)

DISCUSSION

The representative for the Property Owner explained that this was the first year that she had taken over the responsibility of filing the return. In years past the business had an accountant that prepared the filings. The representative in mistake had placed on her calendar that the return was due on March 15. She did file the return on March 10, 2011. She states she now understands the due date was March 1. She asked for leniency.

The Division's representatives stated that they had looked up the account history and this was the first late filing in a five year period. On that basis they indicated that they could recommend that the penalty be waived.

The Commission accepts Respondent's recommendation in this matter, and will waive the penalty considering that it is a first time error. The Commission cautions the Property Owner that the criteria for waiving a second penalty is more stringent.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission waives the penalty assessed pursuant to Utah Code Sec. 59-2-207. 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

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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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner