

13-352
TAX TYPE: PENALTY and INTEREST
TAX YEAR: 2003 through 2011
DATE SIGNED: 8-16-2013
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYERS Petitioner,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 13-352</p> <p>Account No. #####</p> <p>Tax Type: Corporate Franchise Tax</p> <p>Tax Year: 2003 through 2011</p> <p>Judge: Marshall</p>
---	--

Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative
For Respondent: RESPONDENT-1, Taxpayer Services Division
RESPONDENT-2, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on May 7, 2013 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (“Taxpayer”) requested a waiver of the penalties and interest assessed on its Corporate Franchise Tax filing(s) for the 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, and 2011 tax years. The penalties and interest for each tax year are shown below:

Tax Year	Penalties	Interest
2003	\$\$\$\$\$	\$\$\$\$\$
2004	\$\$\$\$\$	\$\$\$\$\$
2005	\$\$\$\$\$	\$\$\$\$\$
2006	\$\$\$\$\$	\$\$\$\$\$
2007	\$\$\$\$\$	\$\$\$\$\$
2008	\$\$\$\$\$	\$\$\$\$\$
2009	\$\$\$\$\$	\$\$\$\$\$
2010	\$\$\$\$\$	\$\$\$\$\$

2011	\$\$\$\$	\$\$\$\$
Total	\$\$\$\$	\$\$\$\$

The Division waived the penalties for the 2003 tax year. Interest continues to accrue on any unpaid balance.

APPLICABLE LAW

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(13) of the Utah Code provides, “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.”

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

- (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.
- (3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
 - (a) Timely Mailing...
 - (b) Wrong Filing Place...
 - (c) Death or Serious Illness...
 - (d) Unavoidable Absence...
 - (e) Disaster Relief...
 - (f) Reliance on Erroneous Tax Commission Information...
 - (g) Tax Commission Office Visit...
 - (h) Unobtainable Records...
 - (i) Reliance on Competent Tax Advisor...
 - (j) First Time Filer...
 - (k) Bank Error...
 - (l) Compliance History...
 - (m) Employee Embezzlement...
 - (n) Recent Tax Law Change...

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

The Taxpayer’s representative stated that the owners association was given incorrect information from the developer. They were initially told that the owners association was organized as a non-profit entity and that they had no filing obligation. He took over the

accounting in November 2012. After doing some extensive research, the Taxpayer's representative determined that returns should have been filed on the prior years, and did so.

He stated that the owners association, and those involved in the management of the association, had the original documents. They believed the developer had done his homework, and they had no obligation to file returns because the owners association was a non-profit organization. The developer originally owned all of the units, he organized the owners association, and the owners inherited it from him. The developer ran the owners association for a year or two, as he started selling off units. Once he had sold enough of the units in the office park, the owners association was turned over to the owners.

The Division's representative stated that when they reviewed the original request for a waiver, it appeared as though the owners association assumed the developer had set everything up correctly, and did not look into whether it was in fact set up correctly. It is the Division's position that the owners association did not undergo any due diligence to determine their filing requirements. She stated that they had never received a Form TC-161 (Utah Registration for Exemption from Corporate Franchise or Income Tax) from the owners association. The Division waived the penalties assessed in 2003, but stated that they did not find reasonable cause to waive the remaining periods. She stated that there was no prior filing history for the account and they did not find anything that would indicate the developer had not filed returns.

The Taxpayer's representative argued that the owners association did not act unreasonably in believing the developer knew what he was doing, as this is not the first time the developer had developed a complex like the subject.

The Commission has promulgated Administrative Rule R861-1A-42 and Publication 17 to outline the circumstances the Commission may consider "reasonable cause" justifying a waiver of penalties. The Taxpayer's representative has not requested a waiver of penalties for any of the circumstances specifically outlined in Rule R861-1A-42. The Division has waived the penalties assessed for 2003 as a first-time error. The Taxpayer voluntarily filed the returns for a period of nine years because of the initiative of their representative, not as a result of an audit or collection efforts by the Tax Commission. Had the Taxpayer's representative contacted the Tax Commission and inquired about the Voluntary Disclosure Program¹, it is likely that the Taxpayer could have limited the look-back period for having not filed, and would not have been assessed penalties. Under the circumstances, the penalties should be waived.

¹ Information on the Voluntary Disclosure Program is available at www.tax.utah.gov/forms/pubs/pub-04.pdf.

Taxpayer has also requested a waiver of interest. With regard to the waiver of interest, Rule R861-1A-42 specifically provides, “[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” The Taxpayer’s representative has not shown there to be an error on the part of the Tax Commission or a Tax Commission employee. Therefore, the interest should not be waived.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission grants the Taxpayer’s request for a waiver of penalties, and denies the request for a waiver of interest assessed on the 2003 through 2011 Corporate Franchise Tax filings. 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 _____, 2013.

R. Bruce Johnson
Commission Chair

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
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.