

04-0019
Penalty & Interest
Signed 07/12/2004

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 04-0019
)	Account No. #####
TAXPAYER SERVICES DIVISION)	
OF THE UTAH STATE TAX)	Tax Type: Income Tax
COMMISSION,)	Penalty & Interest
)	Tax Year: 2002
Respondent.)	Judge: Davis

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, from the law firm of COMPANY
PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, from the Taxpayer Services
Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 1, 2004. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is individual income tax.
2. The period in question is the calendar year 2002.
3. Petitioner did not file his 2002 Individual Income Tax Return until October 6,

2003. He had not made any prepayments of his tax, so a penalty was imposed for late payment and for failure to make a payment to properly extend his tax return.

4. For the prior years, Petitioner had reasonably small amounts of income tax due to the State of Utah, and it substantially increased for the year in question. For the five years including and preceding 2002, Petitioner's income tax liability to the State of Utah was as follows:

1998	\$\$\$\$\$
1999	\$\$\$\$\$
2000	\$\$\$\$\$
2001	\$\$\$\$\$
2002	\$\$\$\$\$

5. Based upon the tax for 2001, if Petitioner had paid an amount of \$\$\$\$\$ on or before April 15, 2003, there would have been no penalty imposed.

6. Petitioner represented that for the year 2002, Petitioner was a non-managing member of a limited liability company which owned and sold a large piece of property during 2002. Petitioner represented that his accountant told him there would be very little tax impact because the sales price of the property was approximately the same amount as the original purchase price of the property. The accountant for Petitioner was not the accountant for the limited liability company, so he did not have the detailed records of the tax basis of the property.

7. Petitioner did not receive a Schedule K-1 until October 2003, shortly before his tax return was filed. When he received the Schedule K-1, he and his accountant recognized that even though the building was sold for approximately the same price as the limited liability company paid for the property, there was a substantial recapture gain because of depreciation and because of

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liability relief, even though the sale generated no net cash proceeds for Petitioner.

8. Petitioner has requested that the penalty be waived because of the unexpected taxable gain, and because it could not be anticipated that such a large amount of income tax would be due.

9. Petitioner had a \$\$\$\$\$ penalty imposed for the same problems for the year 2001. Neither that penalty nor the interest thereon was waived.

APPLICABLE LAW

The Tax Commission is granted the authority to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause. Utah Code Ann. §59-1-401(10).

DISCUSSION

In this matter, the Commission determines that the significant increase in income tax due from Petitioner could not have been anticipated by him in time to timely pay the amount of tax due. The income and the tax were not normal for this Petitioner. Therefore, notwithstanding that Petitioner had a prior penalty for a much smaller amount, the Commission determines there was reasonable cause for the late payment, and therefore the penalty should be waived.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that sufficient cause has been shown to justify a waiver of the penalty, but reasonable cause has not been shown to waive the interest on the amount of the tax. It is so ordered.

DATED this ____ day of _____, 2004.

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G. Blaine Davis
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 _____, 2004.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

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