

04-0109
Audit
Signed 11/22/2004

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 04-0109
)	
TAXPAYER SERVICES DIVISION)	
OF THE UTAH STATE TAX)	Tax Type: Income Tax
COMMISSION,)	Penalty and Interest
)	
Respondent.)	Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, via telephone
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Director, Taxpayer Services
 Division
 RESPONDENT REPRESENTATIVE 2, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 8, 2004. The first matter heard was the Respondent's August 10, 2004, Motion to Dismiss Petitioner's Motion to Set Aside the Default. That was taken under advisement and the parties addressed the merits of the case.

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 income tax.
2. The year in question is 2002.
3. On April 5, 2004, Petitioner failed to appear for his scheduled Initial Hearing. He called in later that day and spoke to one of the support staff in the Appeals Division. She referred Petitioner to

RESPONDENT REPRESENTATIVE 2. Petitioner left a message for RESPONDENT REPRESENTATIVE 2. RESPONDENT REPRESENTATIVE 2 attempted to contact Petitioner via telephone, but was unsuccessful.

4. On April 5, 2004, the ALJ sent Petitioner a letter, informing him a default had been entered against him. In addition to saying Petitioner could contact RESPONDENT REPRESENTATIVE 2 to work toward a resolution, the letter also gave Petitioner the option of writing to request the Default be set aside. The letter instructed Petitioner that, if he were to request the Default be set aside, he was to provide the reasons for the request.

5. On April 8, 2004, the Commission signed the Order of Default and mailed it to Petitioner. Included in the Order of Default was notice to Petitioner that he had thirty days in which to request it be set aside.

6. RESPONDENT REPRESENTATIVE 2 spoke with Petitioner via telephone toward the end of June. Petitioner wrote an undated letter after the telephone call. In that letter, received by the Commission on June 29, 2004, Petitioner stated he had a conversation with RESPONDENT REPRESENTATIVE 2 during the previous week.

7. Petitioner's undated letter states that after speaking with RESPONDENT REPRESENTATIVE 2, he was writing another letter to clarify my circumstances for the dismissal of interest and penalties for the 2002 tax year. Nothing in that letter addresses why the default should be set aside.

8. Sometime in January of 2004, Petitioner wrote a letter, also undated and received January 29, 2004, in which he requested removal of the penalty for the 2002 tax year. It refers to a first letter that is not a part of the record.

9. Petitioner was out of the country in 2002 and part of 2003. He had some difficulty preparing his returns and had become self-employed. He filed his 2001 Utah income tax return on January 24, 2003.

10. Respondent waived the late filing and payment penalties for the 2001 tax year.

11. Petitioner filed his Utah 2002 income tax return on November 7, 2003. This return was initially due by April 15, 2003. Petitioner did not request an extension. He did not make a pre-payment. The latest date for him to have timely filed, with an extension, was October 15, 2003.

12. Respondent imposed late filing and payment penalties totaling \$\$\$\$ for the 2002 tax year. Interest has also accrued. As of the date of the hearing, it was \$\$\$\$\$. The tax due was \$\$\$\$.

13. Petitioner has paid \$\$\$\$\$. The total amount remaining due as of the hearing date was \$\$\$\$.

APPLICABLE LAW

1. Utah Code Ann. §59-1-401 (11) 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.

2. Utah Code Ann. §59-1-401 (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.

3. Utah Code Ann. §59-1-401 (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;

(b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);

- (c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency;
- (d) failure to pay any tax within 30 days after the date the commission's order constituting final agency action resulting from a timely filed petition for redetermination or request for agency action is issued or is considered to have been denied under Subsection 63-46b-13(3)(b); and
- (e) failure to pay any tax within 30 days after the date of a final judicial decision resulting from a timely filed petition for judicial review.

4. §63-46b-11 (1) The presiding officer may enter an order of default against a party if:

....

- (b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or
- (c) a respondent in a formal adjudicative proceeding fails to file a response under Section 63-46b-6.

CONCLUSIONS OF LAW

1. Both Initial Hearings and Formal Hearings before the Commission are formal adjudicative proceedings. R861-1A-24 (2)(B). Thus, they fall under 63-46b-11 (1).
2. Petitioner's failure to participate in the Initial Hearing, following receipt of proper notice, permits a default to be entered against him.
3. Petitioner's failure to file a timely motion to set aside the default and request a formal hearing with 30 days of receipt of the Order of Default caused the Order of Default to become final.
4. Petitioner's failure to file and pay his 2002 State income taxes within the time limits prescribed by 59-1-401 (1) (a) requires he be assessed a penalty of 20% of the unpaid tax due. The unpaid tax due was \$\$\$\$\$. 20% of the unpaid tax due is \$\$\$\$\$.

5. Petitioner has not established reasonable cause for waiving penalty or interest in this case.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that Respondent's Motion to Dismiss Petitioner's Motion to set aside the Order of Default is well founded. The Order of Default became final thirty days after it issued. Additionally, if the Order of Default was to be set aside, Petitioner has not established any factual or legal basis for waiving the penalty and interest he owes. Petitioner is liable for the penalty and interest. It is so ordered.

DATED this ____ day of _____, 2004.

R. Spencer Robinson
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

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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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