

04-0259
Audit
Signed 10/18/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 04-0259
v.)	
)	Account No. #####
AUDITING DIVISION OF THE)	Tax Years: 1998, 1999, 2000
UTAH STATE TAX COMMISSION,)	Tax Type: Income
)	
Respondent.)	Presiding: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on October 6, 2005, pursuant to Utah Code Ann. §59-1-502.5.

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

Petitioner is appealing 10% failure to timely pay and 10% failure to timely file penalties assessed with an audit deficiency for the tax years 1998 through 2000. The penalties totaled \$\$\$\$\$ for 1998, \$\$\$\$\$ for 1999 and \$\$\$\$\$ for 2000. Petitioner and Respondent had resolved

the underlying audit amount of the income tax for each of the years, so it was no longer an issue.

Petitioner explained that in 1994 or 1995 he had gotten divorced and things fell apart for him. He stopped filling returns. He continued not filing because, as he indicated, nothing seemed to happen. Petitioner indicates a few years ago things had started “going good” and he wanted to resolve the tax issues that resulted from the failure to file. There had been years prior to the audit period as well as the audit period. He has now filed returns for all years from 1996 through the present, as well as his 1994 return. He was unable to file a 1995 return as he could not find the information and was going with the non-filing audit for that year. He realized that there was a substantial tax liability for these years and was concerned about being able to make payment arrangements.

Respondent indicated that once the audits had been issued, Petitioner had been very cooperative and worked with the Division, finding the information and filling the returns. However, they point out that the penalties for failure to file and failure to pay, as well as interests are imposed by statute. The penalties are assessed because the returns were filed late and paid late. There is no intent element of these penalties.

DECISION AND ORDER

Upon review of the information, the Commission appreciates the fact that Petitioner has been cooperative and is now trying to resolve the tax issues. However, this does not offset the facts regarding the number of years that he failed to file the returns and the fact that he did not start to do so until after audits had been issued years after the returns were due. Certainly a divorce and emotional issues can contribute to an inability to cope with tax filings timely, but it is not sufficient

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to provide basis for waiver of penalties year after year.

Regardless of this order, Petitioner may contact the Taxpayer Services Division about setting up a monthly payment arrangement. Additionally, he may ask the Taxpayer Services about the Offer in Compromise program where financial hardship may be given consideration. The telephone number for Taxpayer Services is 297-6300.

Based upon the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the penalties and interest associated with Petitioner's audit for tax years 1998 through 2000. 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

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matter.

DATED this _____ day of _____, 2005.

Jane Phan
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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice: If the Petitioner does not request a Formal Hearing within the thirty-days as discussed above, failure to pay the amount of deficiency that results from this order may result in an additional penalty.