

04-0981
Penalty and Interest
08/08/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
Petitioner,)	CONCLUSIONS OF LAW,
)	AND FINAL DECISION
v.)	
)	Appeal No. 04-0981
TAXPAYER SERVICES DIVISION OF THE)	Account No. #####
UTAH STATE TAX COMMISSION,)	
Respondent.)	Tax Type: Penalty & Interest
)	
)	Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Manager, Waiver Unit
 RESPONDENT REPRESENTATIVE 2, Compliance Agent

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 16, 2004. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is requesting waiver of penalties and interest assessed for the late payment and late filing of sales tax.
2. The periods in question are the third quarter of 2000, fourth quarter of 2000, second quarter of 2001 and third quarter 2001.
3. For the third quarter of 2000, Petitioner had not filed the return. A non-filing estimate was made for that quarter. A payment made in January 2002, was then applied to the estimate for that quarter. Petitioner did eventually file a return, which replaced the estimate amount in 2004. The penalties assessed had been a 10% failure to file timely and a 10% failure to pay timely penalty, totaling \$\$\$\$\$. The interest accrued

Appeal No. 04-0981

on that period was \$\$\$\$\$.

4. For the fourth quarter of 2000, the return and payment were filed together. However, they were filed late, in March 2001. The penalties for that period were \$\$\$\$\$ with \$\$\$\$\$ in interest.

5. For the second quarter of 2001 both return and payment were filed together, but were filed late. They were filed in December 2001. The penalties for this period were failure to pay timely and failure to file timely. They total \$\$\$\$\$ in penalties and \$\$\$\$\$ in interest.

6. For the third quarter of 2001 the return was not filed until April 2004. Petitioner had thought she had filed the return and paid the tax for this quarter late, but prior to 2004 a late payment came in without a return. When this occurs the payment is automatically applied to the earliest period where there was a balance, so it was applied to a prior period.

7. Petitioner's representative explained that she was one of two partners. She indicates that they had retained a CPA to do the accounting and prepare the returns and that they had paid him to do so. However, the CPA was the brother-in-law of her partner. She felt that the CPA was intentionally keeping information from her, and dealing instead with her partner in the business. In addition, although they were paying the CPA, she felt because of the relationship he gave their account less priority. Later, when she realized tax filings were not getting filed and paid she took a more active role in the business and made sure this was done.

8. The business was closed in October 2003.

9. Petitioner's representative had come to the Tax Commission on several occasions prior to and after the date the business was closed to clear up the account. In trying to reconcile what Petitioner had paid and where credits had been posted there was some confusion because some payment were applied to earlier periods than she had intended. Apparently in April 2004 and May 2004 Petitioner had talked with a Tax Commission employee about the balance of the amount due. She did not understand that in addition to the tax amount she had incurred penalties and interest. She paid an amount in May 2004 equal to the tax portion.

10. Petitioner's representative explained that she was not the only person responsible for paying this amount. At this point the business had been closed and there were no funds remaining from the business to pay the balance.

11. Respondent's representatives indicated that one of the things they consider in determining whether there should be a waiver is the overall compliance history. There had been prior errors with three quarters late in 1997 and one quarter late in 1999, prior to the quarters at issue in this appeal. In addition there had been collection action initiated. There were no late filings after the third quarter of 2001.

12. The penalty amounts were incurred for late payment and late filing, so they had been incurred at the time the returns and payments were due, not years later when Petitioner had come into the Tax Commission to try to pay off the balance. Interest did continue to accrue on the unpaid balance, but the penalties did not increase after their initial assessment. In addition some of the difficulty in obtaining a final payoff was due to the fact that some of the returns had not been filed and non-filing estimates had been assessed. Once returns were filed they replaced the estimated amount.

CONCLUSIONS OF 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).

DECISION AND ORDER

Upon considering the factors presented in this matter, they do not raise to the level of sufficient reasonable cause for waiver of penalties. The returns and payments were late. Reliance on a tax preparer is not sufficient when returns are not filed. This may justify waiver in some limited cases where the returns were prepared incorrectly, but the business owners remain responsible for seeing that the returns are timely filed. Again the issue with trying to resolve the account was due to the fact that returns had not been

Appeal No. 04-0981

filed and paid timely.

Based upon the foregoing, the Tax Commission finds that sufficient cause has not been shown to justify a waiver of the penalties or interest assessed for late filing and late payment of sales tax for the third and fourth quarters of 2000 and the second and third quarters of 2001. It is so ordered.

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 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.