

04-0996
Income
Signed 07/23/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	04-0996
v.)		
	)	Account No.	#####
AUDITING DIVISION OF THE	)	Tax Years:	2000-2002
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income
)		
Respondent.	)	Judge:	Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5 on June 28, 2007. The matter had been scheduled for a Telephone Status Conference, but was converted to an Initial hearing to deal with the penalty issue. Petitioner is appealing penalties issued with an audit for late filing and late payment of his 2001 Individual Income Tax Return. The penalties totaled \$\$\$\$\$. All other audit issues for the years listed above had been resolved by the parties. The Statutory Notices of Estimated Tax had been issued on June 10, 2004. Subsequent to the audit, Petitioner filed the returns and provided additional information. Respondent issued amended audits on May 29, 2007. Petitioner agrees with the amended audits except for the penalty for the 2001 tax year.

APPLICABLE LAW

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. (b) This Subsection (1) does not apply to amended returns. Utah Code Sec. 59-1-401(1).

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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). Utah Code Sec. 59-1-401(2).

Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received. Utah Code Sec. 59-1-402 (5).

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. Utah Code Sec. 59-1-401(11).

DISCUSSION

Petitioner asks that the penalties be waived based on his account history and the unfortunate circumstances that occurred during the period at issue. He indicates that he had always filed returns timely, but in 2000 he suffered a devastating business loss, which led to his filing bankruptcy, the loss of his business, his residence and everything he owned. He also indicated he did not think he would have had a tax liability due to the losses. The amended audit indicates that for 2000 there was no tax due, so no penalties were assessed.

Respondent submitted a Post Hearing Brief on July 9, 2007. Respondent asked that the penalties be sustained. However, Respondent did confirm that there had been no prior penalties.

Interest is assessed when taxes are not paid or underpaid to compensate the state for the time value of money. Interest is generally waived only in the event the Tax Commission, or Tax Commission employee error gave rise to the late payment or underpayment. There was no showing that interest should be waived in this matter.

DECISION AND ORDER

Based upon Petitioner's compliance history and the other circumstances that he explained in this matter, the Commission finds that sufficient cause has been shown to justify a waiver of the penalties associated with Petitioner's individual income tax for tax year 2001. Petitioner's appeal is dismissed as it pertains to the other audit issues. 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 _____, 2007.

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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Appeal No. 03-1161

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.

JKP/ckl/04-0996.int