

04-1145
Audit
Signed 08/15/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	04-1145
)		
v.	)	Account No.	#####
)		
AUDITING DIVISION	)	Tax Type:	Income / Penalty & Interest
OF THE UTAH STATE)		
TAX COMMISSION,	)	Tax Periods:	2000 & 2001
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Status Conference on August 3, 2005. For both the 2000 and 2001 tax years, the Division assessed tax, penalty, and interest because the Petitioner had not filed Utah income tax returns for these years. The Petitioner has since filed returns for these years and paid the tax. The only remaining issue concerns the Petitioner's request for waiver of penalties and interest associated with the assessment. Upon agreement of the parties, the Status Conference was converted into an Initial Hearing, as described in Utah Code Ann. §59-1-502.5, to address the waiver issue.

PETITIONER explains that upon moving to Utah in 1997, he filed resident returns until 2000, when he accepted employment in STATE from 2000 through 2003. PETITIONER does not contest that he remained a Utah resident during the tax years at issue, but states that he did not know that he had to file Utah returns in addition to the STATE returns that he filed since he had earned no income in Utah. Having now learned of this requirement, PETITIONER promptly filed Utah resident returns and paid the Utah tax due for the years in question. Because he did not know of the requirement to file Utah returns and because he has taken steps to correct his oversight and pay the proper amount due once he learned of it, he asks the Commission to consider these factors and waive any or all of the penalties and interest that was assessed.

The Division states that prior to the years at issue, the Petitioner filed his returns and paid the tax due in a timely manner. Accordingly, penalties have not previously been waived.

APPLICABLE LAW

UCA §59-10-539(1) provides for the imposition of penalty and interest, pertinent parts as follow:

- (1) In case of failure to file an income tax return and pay the tax required under this chapter on or before the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return a penalty as provided in Section 59-1-401. For the purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.
- (2) If any part of any deficiency in tax imposed by this chapter, as defined by Section 59-10-523, is due to negligence or intentional disregard of rules,

but without intent to defraud, a penalty shall be assessed, collected, and paid as provided in Section 59-1-401 in the same manner as if it were an underpayment.

....

(8) In addition to the penalties added by this section, there shall be added to the tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments.

UCA §59-1-401(2) provides for the imposition of a penalty for failure to pay tax when due, as follows:

(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.

UCA §59-1-402(5) provides that “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the tax 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.”

Furthermore, in those situations where penalty and interest have been properly imposed, 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

There is no dispute that the penalty and interest at issue were properly imposed. Although penalties and interest may be waived upon a finding of reasonable cause to do so, the criteria for waiver is different for interest as opposed to penalties.

Interest is charged because the taxpayer has had the use of the tax dollars during a period when the state should have had that use. For this reason, interest is only waived if the imposition of interest arose from a Commission employee's error. There is no testimony or evidence proffered to show that a Tax Commission error caused the circumstances leading to the interest assessment. Accordingly, the Commission does not find reasonable cause to waive the interest at issue and, as a result, sustains the interest as assessed.

On the other hand, the Commission considers a number of situations to be reasonable cause to waive a penalty, one of them being a consideration of the taxpayer's prior tax payment history. In this instance, the Petitioner had always filed his Utah tax returns and paid his Utah tax liability in a timely manner until he began working in STATE. There is no indication that he purposefully tried to avoid tax liability, as he filed and paid taxes to STATE. Nor does the Commission consider it gross negligence on the Petitioner's part, under the circumstances described,

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not to have known or found out that he had a duty to file Utah returns as well. For these reasons, the Commission finds that reasonable cause exists to waive the penalties assessed for the 2000 and 2001 tax years.

DECISION AND ORDER

Based upon the foregoing, the Commission finds the penalty and interest assessed for the two tax years at issue were properly imposed. Nevertheless, the Commission waives the penalties that were imposed for both years, upon finding reasonable cause to do so. However, the Commission sustains the interest assessment. 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 _____, 2005.

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Kerry R. Chapman
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

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