

04-1245  
Audit  
Signed 03/24/2006

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No. 04-1245
v.	)	
	)	Account No. #####
AUDITING DIVISION OF THE	)	Tax Years: 1996-1999
UTAH STATE TAX COMMISSION,	)	Tax Type: Income
	)	
Respondent.	)	Judge: Phan

---

**Presiding:**  
Jane Phan, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER  
For Respondent: RESPONDENT REPRESENTATIVE, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on March 16, 2006. Petitioner is appealing penalties and interest assessed with an audit for tax years 1996 through 1999. The penalties assessed were 10% late file and 10% late payment penalties pursuant to Utah Code Sec. 59-1-401. Interest assessed with the audits and continues to accrue on the unpaid balance. Petitioner had failed to file the returns when they became due. Respondent issued audit deficiency in September 2004. After which, Petitioner filed returns. Respondent has accepted the returns as filled by Petitioner and has posted the returns over the audit. Penalties have now been adjusted based on 10% of the unpaid tax claimed on the filed returns. The amount of the penalties are \$\$\$\$ for tax year 1996, \$\$\$\$ for tax year 1997, \$\$\$\$ for tax year 1998 and \$\$\$\$ for tax year 1999.

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 Sec. 59-1-401(10).

DISCUSSION

Petitioner argues that the penalties should be waived based primarily on the fact that she did not have the funds to pay the balance due. She explained that for the 1996 tax year she had assumed that the return had be filed by her fiancé's accountant. There had been an issue with a stock sale for 1995 and 1996 and she thought the return had been taken care. In October 1997 her fiancé died unexpectedly. She indicates that she did not have a good excuse regarding the filing for tax years 1997 through 1999, she just was not able to cope with the filing and for the next several years did not file returns. She indicates that she thought there had been enough withholding to pay the taxes that she owed. Some years had been underpaid, but some had been overpaid so she thought it would work out.

Respondent's representative indicated that Petitioner had not filed her returns or paid her tax timely for the years at issue. The amount of tax due on the account is the amount that she claimed on her income tax returns for the years at issue and the penalties are for late filing and late payment. He had looked at the account only as far back as 1994. For both 1994 and 1995 the taxes were filed and paid timely.

It is clear in this matter that Petitioner had filed and paid her returns late for the years at issue. There is no intent element required for these penalties and so they were appropriate. However, the Commission may consider if there is reasonable cause for waiver. Considering that it was her first error in at least a three-year period and the death of her fiancé, the Commission finds that there is cause for waiver of the penalty for tax year 1996. However, the Commission sustains the remainder of the penalties.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the penalties for tax year 1996 sufficient cause has not been shown for waiver of the interest or the penalties for the years 1997 and 1998. It is so ordered. This decision does not preclude Petitioner from contacting the Taxpayer Services Division about making an offer in compromise based on financial hardship. The telephone number to contact that Division is #####.

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 \_\_\_\_\_, 2006.

---

Jane Phan  
Administrative Law Judge

Appeal No. 04-1245

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 \_\_\_\_\_, 2006.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

*JKP/04-1245.int.doc*