

04-1403
Audit
Signed 08/28/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	04-1403
v.)		
)	Account No.	#####
AUDITING DIVISION OF THE)		
UTAH STATE TAX COMMISSION,)	Tax Type:	Income
)		
Respondent.)	Judge:	Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, CPA

For Respondent: RESPONDENT REPRESENTATIVE, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on July 27, 2006, pursuant to Utah Code Sec. 59-1-502.5. The matter had been scheduled for a Telephone Status Conference but the conference was converted to the Initial Hearing with the consent of the parties. Petitioners are appealing penalties assessed for late payment of tax regarding tax year 1999.

APPLICABLE LAW

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

The circumstances that gave rise to the late filing and payment were fairly complicated. Petitioners sold a business that they had owned during the tax year 1999. The determination of the basis of the

sale for tax and accounting purposes was very complicated as well as determining the percentage of ownership and other interests. Petitioners made a substantial prepayment of approximately \$\$\$\$ by the April 15, 2000 deadline, thinking that would be the Utah liability. Petitioners' representative indicated that they were just unable to determine the tax amount until January of 2001. At that point the return was filed and it indicated that Petitioners owed an additional \$\$\$\$ in Utah tax. Petitioners paid the tax and interest as well as a \$\$\$\$ late filing penalty and a \$\$\$\$ late payment penalty. Because they were late, they paid the penalties and did not request waiver.

Subsequently, Petitioners filed amended returns that reduced the Utah tax liability. As the Utah tax liability was reduced the amount of the late payment penalty was reduced to 10% of the additional tax amount over the approximately \$\$\$\$ prepayment. However, the amount of the late file penalty was never adjusted, and remained based on the 10% of the underpayment amount claimed on the original return. After the fourth amended return was filed the account was adjusted based on the return to a tax amount lower than the prepayment amount, so that no underpayment was indicated. The late payment penalty was reduced to \$\$. However, the late filing penalty remained at \$\$. It was at this point the Internal Revenue Service audited the account, which resulted in an increase in federal taxable income from the amount claimed on the fourth amended return. Utah then followed with an audit based on the new numbers set by the IRS. Although the audit did increase the tax amount to the extent that there would have been an underpayment, the audit did not assess a penalty and so only the one penalty remained, which was the late filing penalty of \$. The audit was basically resolved after a fifth amended return was filed by Petitioners, which lowered the additional tax from the audit amount, but was high enough that it indicated an underpayment from the original prepayment amount. Once the amended return posted over the audit, a late payment penalty of \$\$\$\$ was automatically added by the computer, which was 10% of the underpayment amount.

Petitioners request that this last \$\$\$\$\$ in penalties be waived. They have already paid an amount equal to the tax, the late filing penalty and the interest accrued on those amounts. Petitioners representative had initially thought the additional \$\$\$\$\$ was the result of the final amended return and pointed out that the final amended return and payment of tax based thereon were not late and no penalty should be assessed on it. However, when she understood the penalty actually related back to the fact that the original filling were late, she had explained the difficulty in determining the tax amount and the fact that Petitioners had made a prepayment of the amount they thought was correct.

It was Respondent's position that if Petitioners were going to contest the penalty they should have done so when it was originally assessed after the late filing and payment of the original return. The current amount of the penalty is just the original late payment penalty adjusted for the final amount determined as an underpayment. Respondent's representative had reviewed Petitioner's account history and there were no late payment or late file penalties assessed prior to the 1999 tax year. She indicated that for some years when there was no tax balance due Petitioners had filed late, but no penalty would be assessed when there was no tax due. The years when there had been tax owing Petitioners had filed and paid timely.

Considering if there is reasonable cause for waiver of the last \$\$\$\$\$ penalty, the Commission finds for the Petitioner. The Commission notes that the audit did not assess an additional penalty and had the audit tax amount been resolved through a hearing process or by Respondent amending the audit there would have been no additional penalty. However, because the audit tax amount was resolved through an amended return the penalty was automatically added to the account. Additionally tax year 1999 was the first time a penalty had been assessed on the account.

Additionally this raises a concern with the late filing penalty that had remained at \$\$\$\$\$, despite the fact that the underpayment of tax from the original prepayment had been reduced to \$\$\$\$\$. The

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amount of the penalty should be based on the corrected amount of the underpayment. Therefore, the Commission finds it should reduce the penalty to 10% of the corrected tax underpayment, or \$\$\$\$\$.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the late payment penalty of \$\$\$\$\$ assessed regarding Petitioners 1999 Utah individual income tax filing. Additionally the Commission finds that the late filing penalty should be reduced to \$\$\$\$\$, based on the final, correct amount of the underpayment. Respondent is ordered to make this adjustment.

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

BY ORDER OF THE UTAH STATE TAX COMMISSION:

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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

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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.

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