

05-0033
Audit
Signed 04/04/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 05-0033
v.)	
)	Account No. #####
AUDITING DIVISION,)	Audit Period: 2001
UTAH STATE TAX COMMISSION,)	Tax Type: Penalty & Interest
)	
Respondent.)	Presiding: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Senior Auditor
RESPONDENT REPRESENTATIVE 2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Commission for a Telephone Status Conference on March 30, 2005. The Conference was converted to the Initial Hearing so a decision could be issued concerning the penalties.

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 Ann. §59-1-401(10).

DISCUSSION

Petitioner had originally filed an appeal of audit deficiencies of additional tax, penalties and interest for the tax year 2001. However, after a discussion at the Hearing and an

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explanation of how the tax amount had been calculated, Petitioner concluded he would not pursue the appeal in regards to the tax amount, but requested waiver of the \$\$\$\$ in penalties and interest.

Factors relevant to waiver of the penalty presented were that Petitioner had moved to Utah during 2001 and the 2001 return would have been the first time filing in Utah. The reason he had not filed a Utah return was that he thought the unemployment compensation paid to him from the State of STATE was not taxable to the State of Utah and excluding that income, he thought he had insufficient income to require filing a Utah return.

Interest is generally waived only if Tax Commission error contributed directly to the failure to file or pay. In this case the error was on the part of Petitioner.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the penalties associated with the audit of his 2001 income tax. Sufficient cause has not been shown for waiver of the interest. Auditing is hereby ordered to adjust the audit accordingly. 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

Appeal No. 05-0033

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.

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: If the Petitioner does not request a Formal Hearing within the thirty-days as discussed above, failure to pay the amount of deficiency that results from this order may result in an additional penalty.

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