

05-0202
Audit
Signed 07/06/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	ORDER
)	
Petitioners,)	Appeal No. 05-0202
)	
v.)	Acct Nos. #####
)	#####
AUDITING DIVISION,)	Tax Period: 2001 & 2002
UTAH STATE TAX COMMISSION,)	Tax Type: Penalty & Interest
)	
Respondent.)	Presiding: Robinson

Presiding:
R. Spencer Robinson, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER 1, *pro se*, via telephone
For Respondent: RESPONDENT REPRESENTATIVE 1, Senior Auditor
 RESPONDENT REPRESENTATIVE 2, Senior Auditor

STATEMENT OF THE CASE

The parties participated in an Initial Hearing on May 2, 2005. Petitioners initially requested a waiver of penalty and interest. Respondent denied the request on April 12, 2005.

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(11).

DISCUSSION

Petitioners did not file Utah tax returns for the years 2001 and 2002. They were unaware they were required to do so, as they had no knowledge of Utah source income. An audit of COMPANY, concluded January 18, 2005, determined Petitioners had Utah source income during those years and had failed to file.

Appeal No. 05-0202

Petitioners are members of COMPANY. The partnership return listed %%% of the income as sourced in Utah. However, Petitioners had no knowledge of this. The K-1 issued to Petitioners erroneously sourced the income to STATE 1.

On becoming aware of the error, Petitioners filed non-resident Utah returns and paid a total of \$\$\$\$ in taxes. They requested a waiver of penalty and a recalculation of interest.

Respondent agreed to recalculate the interest based on the payment of \$. As of the date of the hearing, interest was \$\$\$\$ for 2001 and \$\$\$\$ for 2002. Petitioner agreed to pay those amounts by the end of the week. Petitioners maintained their request for waiver of the penalties. The penalties are \$\$\$\$ for 2001 and \$\$\$\$ for 2002.

Factors relevant to waiver of the penalty presented were that Petitioners relied on the K-1's issued by COMPANY. They sourced the income to STATE 1. Petitioner PETITIONER 1 has no clients in Utah. He had no knowledge of any Utah source income flowing to COMPANY. Petitioners realized no gain from what occurred. Petitioners are STATE 2 residents. They filed amended STATE 2 returns to receive credit there for taxes paid to Utah.

Respondent relies upon §59-1-401(1)(a) and §59-1-401(2) and (2)(b). The former provides a penalty of \$20 or 10%, whichever is greater, for failure to file a return. The latter provides a penalty of \$20 or 10%, whichever is greater, for failure to pay the tax due. Respondent did not present evidence of previous errors or waivers.

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 Petitioners' 2001 and 2002 income tax. Auditing is hereby ordered to adjust the audit accordingly. It is so ordered.

Appeal No. 05-0202

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.

R. Spencer Robinson
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.

RSR/05-0202.int