

05-0365
Audit
Signed 02/27/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-0365
)		
v.	)	Account No.	#####
)		
AUDITING DIVISION	)	Tax Type:	Income / Penalty Waiver
OF THE UTAH STATE)		
TAX COMMISSION,	)	Tax Periods:	2001
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER (by telephone)

For Respondent: RESPONDENT REPRESENTATIVE 1, from Auditing Division
RESPONDENT REPRESENTATIVE 2, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on February 14, 2006.

On April 20, 2005, Auditing Division (“Division”) issued a Statutory Notice of Estimated Income Tax for the 2001 tax year to the Petitioner, in which it imposed additional income tax and interest. Because the Petitioner had not filed a 2001 Utah tax return or paid the tax due, the Division also imposed a 10% penalty for failure to file an appeal when due and a 10% penalty for failure to pay tax when due.

The Petitioner does not contest the tax or interest that was assessed. However, he asks the Commission to waive the penalties because he had no idea that a 401(k) distribution that he received from his STATE employer while living in Utah for nine months would be subject to Utah taxation.

APPLICABLE LAW

UCA §59-10-539(1) provides for the imposition of penalty, 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.

.....

UCA §59-1-401 provides for the imposition of penalties for failure to file returns and pay tax when due, as follows:

(1) (a) The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return.

.....

(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.

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

The only issue before the Commission is the Petitioner's request for a waiver of the penalties assessed in this matter. For the tax year at issue, the Petitioner does not dispute that he was required to file a Utah tax return and pay Utah individual income tax, or that he failed to do both in a timely manner. Accordingly, the Division legally imposed the 10% penalty for failure to timely file a return and the 10% penalty for failure to timely pay tax for the 2001 tax year, pursuant to Sections 59-10-539 and 59-1-401.

At issue is whether "reasonable cause" exists for the Commission to waive the penalties in accordance with Subsection 59-1-401(10). The Petitioner asks the Commission to waive the penalties because he mistakenly believed the income was taxable to STATE, where he had recently lived. Utah State Tax Commission Publication 17 (revised 04/04), Waivers – Reasonable Cause, provides that it is "reasonable cause" to waive a penalty associated with a "first time filer." Because of the circumstances in this case, the Petitioner's requirement to file a Utah return and pay

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Utah income tax first arose in the tax year at issue. Now that the Petitioner was made aware of his mistake, he has paid the Utah tax due. Under these circumstances, the Commission believes that sufficient “reasonable cause” exists to waive the penalties.

DECISION AND ORDER

Based upon the foregoing, the Commission finds the penalties assessed for the 2001 tax year were properly imposed. However, the Commission finds that “reasonable cause” exists to waive the penalties and orders that they be waived. 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 _____, 2006.

Kerry R. Chapman
Administrative Law Judge

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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

Notice: If a Formal Hearing is not requested as discussed above, failure to pay any balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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