

05-0623
Audit
Signed 10/17/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-0623
v.)		
	)	Account No.	#####
AUDITING DIVISION OF	)	Audit Period:	1997-2002
THE UTAH STATE TAX	)	Tax Type:	Income Tax
COMMISSION,)		
	)	Judge:	Robinson
Respondent.)		

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, CPA
For Respondent: RESPONDENT REPRESENTATIVE, from the 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 September 20, 2005.

Petitioners are appealing penalties assessed for failure to file and pay taxes on Utah source income in the years 1997 through 2002. Respondent sent Statutory Notice for each of the tax years at issue to Petitioners on April 22, 2005. Petitioners filed a timely appeal. They do not challenge the assessment of tax or interest.

Petitioners are not Utah residents. However, they had Utah source income from rental properties in each of the above noted tax years. They provided all of the information reflecting their income to a certified public accountant, who prepared their tax returns. The information clearly identified Utah as the source for a portion of their income.

The person preparing the 1997 through 2002 returns did not advise Petitioners they needed to file Utah State income tax returns. Petitioners did not ask if they needed to do so.

Respondent assessed a \$\$\$\$ penalty for the 1997 tax year; a \$\$\$\$ penalty for the 1998 tax year; a \$\$\$\$ penalty for the 1999 tax year; a \$\$\$\$ penalty for the 2000 tax year; a \$\$\$\$ penalty for the 2001 tax year; and a \$\$\$\$ penalty for the 2002 tax year. The total is \$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-1-401 (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.”

Utah Code Ann. §59-1-401 (2) “The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:

••••

(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);

Utah Code Ann. §59-1-401(11) “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.”

DISCUSSION

The Petitioner agrees it owes the taxes due, plus interest, from each of the above noted years. However, it asserts reasonable cause to waive penalties exists because it relied on a professional tax preparer. The Commission has previously waived penalties when the error is due to reliance on competent tax advice. See Tax Commission Publication 17, Waivers – Reasonable Cause (revised 04/04), and Appeal No. 04-1122.

DECISION AND ORDER

Petitioners reasonably relied on a “competent tax advisor” as discussed in Publication 17. The Commission waives the penalties assessed. Petitioners remain responsible for payment of taxes and interest. 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 _____, 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