

05-0692
Centrally Assessed Property Tax
Signed 02/01/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINAL ORDER FROM FORMAL
)	HEARING
)	
Petitioner,)	Appeal No. 05-0692
)	Account No. #####
v.)	Tax Year 2005
)	
PROPERTY TAX DIVISION,)	Tax Type: Centrally Assessed/Property Tax
UTAH STATE TAX COMMISSION,)	Penalty
)	
Respondent.)	Judge: Rees

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Commissioner Palmer DePaulis
Irene Rees, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Legal Counsel for Petitioner
PETITIONER REPRESENTATIVE 2, Petitioner's Tax Representative
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from Property Tax Division

STATEMENT OF THE CASE

Following an Initial Hearing on this matter, the Commission issued an Order dated September 13, 2005 upholding the penalty assessment imposed by the Division. Petitioner appealed that Order and this matter came before the Commission in a Formal Hearing on January 26, 2006. In

the hearing, the Petitioner renewed its request for waiver of the penalty and the Division agreed that waiver is appropriate in this case.

APPLICABLE LAW

Pursuant to Utah Admin. Code §59-2-207(1)(a), a centrally assessed taxpayer shall, on or before March 1 of each year, file with the Division a statement:

- (i) showing in detail all real property and tangible personal property located in the state that the person owns or operates; and
- (ii) containing any other information the commission requires.

Pursuant to Subsection 59-2-207(1)(c), extensions to the March 1 filing deadline are allowed, as follows:

(c) (i) The commission may allow an extension for filing the statement under Subsection (1)(a) for a time period not exceeding 30 days, unless the commission determines that extraordinary circumstances require a longer period of extension.

(ii) The commission shall grant a person, or an officer or agent of that person, an extension for filing the statement under Subsection (1)(a) for a time period not exceeding 15 days if:

(A) a federal regulatory agency requires the taxpayer to file a statement that contains the same information as the statement under Subsection (1)(a); and

(B) the person, or an officer or agent of that person, requests the commission to grant the extension.

For a taxpayer that does not file its statement within the statutory timeframe, a penalty is imposed pursuant to Subsection 59-2-207(3), as follows:

(3)(a) Except as provided in Subsection (3)(c), the commission shall assess a person a penalty as provided in Subsection (3)(b), if the person, or an officer or agent of that person, fails to file:

(i) the statement required under Subsection (1)(a) on or before the later of:

(A) March 1; or

- (B) if the commission allows an extension under Subsection (1)(c) for filing the statement, the day after the last day of the extension period; or
- (ii) any other information the commission determines to be necessary to:
 - (A) establish valuations for assessment purposes; or
 - (B) apportion an assessment.
- (b) The penalty described in Subsection (3)(a) is an amount equal to the greater of:
 - (i) 10% of the person's estimated tax liability under this chapter for the current calendar year not to exceed \$50,000; or
 - (ii) \$100.
- (c) (i) Notwithstanding Subsections (3)(a) and (4), the commission may waive, reduce, or compromise a penalty imposed under this section if the commission finds there are reasonable grounds for the waiver, reduction, or compromise.
 - (ii) If the commission waives, reduces, or compromises a penalty under Subsection (3)(c)(i), the commission shall make a record of the grounds for waiving, reducing, or compromising the penalty.

DISCUSSION

The Petitioner filed its annual return in a timely matter, but the information was incomplete. The Division asked for additional information, but Petitioner was unable to supply complete information within the time period specified by the Division. Petitioner points out that the Division was either asking the Company to supply new information (information that the company had not reported in the past) or to supply information in a new format. Given the early reporting date in Utah, the Division's request did not leave adequate time to gather and submit the information within the allowed time frame.

The Division agrees that the Petitioner filed its return in a timely matter, but the Division needed additional information to complete its work on the property tax assessment for

2005. When the information was not provided during the extension period, the Division imposed the 10% penalty, as required by law. At the hearing, the Division acknowledged that the Company has been cooperative in complying with the Division's requests for additional information. The Division also acknowledged that the Commission generally waives the penalty for a first time error when a taxpayer with a good filing history works cooperatively with the Division. Consistent with that general policy, the Division states that a waiver is appropriate in this case.

The Division is required by statute to impose penalties under the circumstances set out in Utah Code section 59-2-207(3), subsections (a) and (b). Waiver requests are considered by the Commission, which has authority to waive the penalty assessment under Utah Code section 59-2-207(3)(c). It is the policy of the Commission to waive the penalty if, as in this case, the taxpayer has a strong compliance history with no previous assessments of late filing penalties and if the taxpayer worked cooperatively to submit the information requested.

DECISION AND ORDER

After reviewing the circumstances in this matter, the Commission finds that the penalty was properly imposed, but waives the penalty because reasonable grounds exist to do so. It is so ordered.

DATED this _____ day of _____, 2006.

Irene Rees
Administrative Law Judge

Appeal No. 05-0692

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

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