

05-0708  
Centrally Assessed Property Tax  
Signed 11/17/2005

BEFORE THE UTAH STATE TAX COMMISSION

---

|                       |   |              |                                 |
|-----------------------|---|--------------|---------------------------------|
| PETITIONER,           | ) |              |                                 |
|                       | ) | <b>ORDER</b> |                                 |
| Petitioner,           | ) |              |                                 |
|                       | ) | Appeal No.   | 05-0708                         |
| v.                    | ) |              |                                 |
|                       | ) | Tax Year:    | 2005                            |
| PROPERTY TAX DIVISION | ) | Tax Type:    | Property Tax/Centrally Assessed |
| OF THE UTAH STATE TAX | ) |              |                                 |
| COMMISSION,           | ) | Judge:       | Phan                            |
|                       | ) |              |                                 |
| Respondent.           | ) |              |                                 |

---

**Presiding:**  
Jane Phan, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER REPRESENTATIVE  
For Respondent: RESPONDENT REPRESENTATIVE 1  
                  RESPONDENT REPRESENTATIVE 2

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 August 4, 2005. At the hearing Respondent requested time to file a posthearing brief in this matter. The Brief was filed on September 20, 2005. Petitioner was granted fifteen days to file a reply brief but did not do so.

APPLICABLE LAW

A person, or an officer or agent of that person, owning or operating property described in Subsection(1)(b) shall, on or before March 1 of each year, file with the Tax Commission a signed statement in a form prescribed by the Tax Commission. (Utah Code Ann. 59-2-202(1).)

The Commission shall assess a penalty as provided in Subsection (3)(b) if one required to file the statement fails to file the statement required under Subsection (1)(a), or any other information the

Appeal No. 05-0708

Commission determines to be necessary to establish value and apportion the assessment, on or before the later of March 1, or if the Property Tax Division allows an extension, the day after the last day of the extension period. (Utah Code Ann. 59-2-202(3).)

The penalty is equal to the greater of 10% of the estimated tax due not to exceed \$50,000; or \$100. (Utah Code Ann. 59-2-202(3)(b).)

### DISCUSSION

Respondent had assessed the penalty pursuant to Utah Code Ann. 59-2-202(3) in this matter because Petitioner failed to timely file its Annual Property Tax Report. Petitioner filed an appeal of the penalty but at the hearing indicated that the issue was not that the penalty had been assessed, as Petitioner did not have grounds for waiver, it was the amount of the penalty. Petitioner had also appealed the assessed value of the property in this matter and indicates that they were in the process of trying to work out an agreement that would lower the assessed value for the property. It was Petitioner's request that the amount of the penalty be reduced based on the new value, rather than remain 10% of the estimated tax based on the original assessment.

It is Respondent's position that the amount of the penalty is based on the amount of the original assessment and would not be reduced if the original assessment is reduced. In its brief, Respondent points to the language of the statute regarding the penalty. Utah Code Sec. 59-2-202(3)(b) indicates the penalty is to be an amount equal to the greater of 10% of the person's "estimated tax liability." The same section of the statute indicates that if the return is not filed the property is to be assessed using the "best information obtainable by the commission." Utah Code Sec. 59-2-202(2).

"Estimated tax liability" is not defined in the statute and the chapter refers elsewhere to an assessment. When an assessment is appealed to the State Tax Commission, the statutory provisions indicate that the Commission may increase, lower or sustain the "assessment." See Utah Code Sec. 59-2-1007(7).

Appeal No. 05-0708

Based on this it is clear that term “estimated tax liability” was a specific reference and not intended to mean a revised assessment resulting from the appeal, but rather the original assessment based on the “best information obtainable” pursuant to Utah Code Sec. 59-2-202(2).

Respondent also adds that although the penalty may be waived or reduced based on a showing of reasonable cause, there was no such showing in this case. Respondent’s representatives point to the fact that there was extensive history of late filing the return. The Commission notes that Petitioner did not argue for waiver or reduction on the basis of reasonable cause. In absence of a showing that the estimate was made in bad faith or otherwise improper there is no basis for waiver.

DECISION AND ORDER

Based on the forgoing, the Commission concludes that the penalty should not be adjusted based on an eventual reduction in assessment. The penalty is sustained. It is so ordered.

This decision does not limit a party's right to a Formal Hearing or the right of an affected county to show cause pursuant to section 59-2-1007 why the Commission should not adjust the values in accordance with this order. However, this Decision and Order will become the Final Decision and Order of the Commission unless an affected party 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 administrative appeal rights in this matter. In that event, the Property Tax Division is ordered to adjust its records in accordance with this order. The Property Tax Division is also ordered to calculate the final adjustments to the values apportioned to

Appeal No. 05-0708

tax districts as a result of this order and to deliver that information to the affected counties on behalf of the Commission. The auditors of the affected counties are ordered to use the information so provided to adjust their tax roles in accordance with this order.

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

*JKP/05-05-0708.int.doc*