

05-0714  
Audit  
Signed 09/08/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	05-0714
v.	)		
	)	Account No.	#####
AUDITING DIVISION OF THE	)		
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income
	)		
Respondent.	)	Judge:	Phan

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

**Appearances:**  
For Petitioner: PETITIONER REPRESENTATIVE, CPA  
For Respondent: RESPONDENT REPRESENTATIVE, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on August 25, 2005. The matter had been set for a Status Conference but was converted to an Initial Hearing. Petitioner had originally filed an appeal of a nonfiling audit deficiency for tax year 1997. Subsequently, Petitioner filed a tax return for that year and Respondent accepted the return and posted it over the audit. The only issue remaining for the hearing was whether the penalties and interest should be waived. The penalties were \$\$\$\$ and the interest \$\$\$\$\$. The amount of additional tax indicated on the return eventually filed by Petitioner and paid in 2005 was \$\$\$\$\$. This amount should have been paid on April 15, 1998, and interest accrued since that time on the account.

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(10).

DISCUSSION

Petitioner requests that penalties and interest be waived. Petitioners' representative points out that it took the state so many years to contact Petitioner about filing a tax return for the year at issue. For that reason a significant amount of interest had accrued. He indicated that he had been told there was something with the old computer system that did not flag the account. Additionally, Petitioner had not filed and paid his 1996 tax return and that year was audited the same time as the 1997-year. Since Petitioner had no information to prepare a return he just filed and paid the 1996 audit.

Petitioner's representative indicated that one reason Petitioner had been less careful about filing returns was that his wife had a debilitating illness. She had died from the illness in April 2002. However, he indicates that she had been very ill and required kidney dialysis for several years prior. The return at issue should have been filed and taxes paid in April 1998 and this information about the illness was not specific to that period of time.

Respondent acknowledges that the first time Petitioner was notified by the Tax Commission that he had not filed a 1997 income tax return was in July 2004. She also points out that Petitioner's account history indicates filing errors of a variety of types for which penalties had been assessed every year from 1993 through 1999.

Interest is assessed when taxes are not paid or underpaid to compensate the state for the time value of money. Interest is generally waived only in the event the Tax Commission, or Tax Commission employee error gave rise to the late payment or underpayment. In this case the error was on the part of Petitioner. He did not file an income tax return for the year at issue, nor pay the additional tax due which was an amount significantly larger than the withholding paid on his behalf during the year. It is the taxpayer's responsibility under the law to make sure he files and pays every year and the fact that it took several years for

the Tax Commission to catch the omission is never basis for waiver. Nonfilings are difficult to track and there is no statute of limitations period for issuing an assessment where a taxpayer failed to file a return. See Utah Code Sec. 59-10-536(3).

As to the illness of Petitioner's wife, this is very unfortunate. However, the evidence on how this affected Petitioner at the time the return was due was not presented. Additionally the Commission must weigh this with the fact that Petitioner had errors of one type or another every year on his account, which is a consideration for waiver of penalties or interest. From his account it appears that his state tax returns received a lack of priority generally and the penalty appears to be justified. Additionally, this situation is different from the more typical nonfiling where there had been a significant portion of the tax paid during the tax year through withholding. This Petitioner apparently pays most of the tax when the return is filed as the withholding was only a fraction of the tax due.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the penalties or interest assessed due to the late filing and payment of Petitioner's 1997 individual income tax. 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

Appeal No. 05-0714

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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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

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