

05-0768
Centrally Assessed Property Tax
Signed 08/15/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-0768
)		
v.	)	Account No.	#####
	)	Tax Year	2005
PROPERTY TAX DIVISION,	)	Tax Type:	Centrally Assessed/Property Tax
UTAH STATE TAX COMMISSION,	)		Penalty
)		
Respondent.	)	Judge:	Chapman

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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, President
For Respondent: RESPONDENT REPRESENTATIVE 1, from Property Tax Division
RESPONDENT REPRESENTATIVE 2, from Property tax Division

STATEMENT OF THE CASE

This matter came before the Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on August 10, 2005.

At issue is a late filing penalty assessed to the Petitioner for the 2005 tax year. The Division assessed PETITIONER ("PETITIONER") a penalty for the 2005 tax year for not filing its

annual property tax statement on or before March 1.

The Petitioner explains that it is in litigation concerning the ownership of property that is assessed by the Division under this account number. The Petitioner further explains that its legal counsel advised it not to file an annual statement that might be construed by its opposing party in the lawsuit to be an admission of which properties it might or might not own. The Petitioner states that it asked the Division for help in crafting the annual statement in such a way as to give the Division the information it wanted but without harming the company in its litigation efforts.

The Division states that the Petitioner did not contact it until after the Division sent a March 22, 2005 letter to the Petitioner informing it that it had not filed its annual statement. The Division states that the Petitioner had never been late in filing its annual statement until 2004, when it first filed the statement beyond the statutory deadline. The Petitioner explains that the late filing in 2004 and 2005 are both related to the ongoing lawsuit.

The Division asserted that the Petitioner has been co-operative with the Division in the past. When the Division was asked whether it recommended that the penalty be waived or sustained by the Commission under these circumstances, the Division answered that it would not make a recommendation one way or the other.

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 did not file the annual statement required under Section 59-2-207(1)(a) before the statutory deadline of March 1. Nor did the Petitioner contact the Division on or before the deadline to discuss the issues explained at the hearing. For these reasons, the penalty was properly imposed.

Although the Commission has the authority to waive the penalty if reasonable grounds exist, the Commission is reluctant to do so because it is the second year on a row in which the Petitioner has failed to comply with the law and because it did not contact the Division prior to March 1 to work out a solution that could satisfy both parties. Accordingly, the penalty is sustained and the Petitioner's appeal is denied.

DECISION AND ORDER

After reviewing the circumstances in this matter, the Commission finds that the penalty was properly imposed and that reasonable grounds do not exist to waive it. Accordingly, the penalty is sustained. It is so ordered.

Appeal No. 05-0768

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 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.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 05-0768

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

KRC/05-0768.int