

05-0779
Centrally Assessed Property Tax
Signed 10/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-0779
v.)		
	)	Account No.	#####
PROPERTY TAX DIVISION)		
OF THE UTAH STATE TAX	)	Tax Type:	Property Tax/Centrally Assessed
COMMISSION,	)	Tax Year:	2005
)		
Respondent.	)	Judge:	Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1
 PETITIONER REPRESENTATIVE 2
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, Property Tax Division
 RESPONDENT REPRESENTATIVE 3, Property Tax 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 July 21, 2005.

APPLICABLE LAW

A person, or an officer or agent of that person, owning or operating property described in Subsection(1)(b) shall file with the commission, on a form prescribed by the commission, a sworn statement on or before March 1 of each year. (Utah Code Ann. 59-2-207(1)(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

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(ii) any other information the commission determines to be necessary (Utah Code Ann.  59-2-207(3)(a).)

The penalty is equal to the greater of 10% of the estimated tax due not to exceed \$50,000; or \$100. (Utah Code Ann.  59-2-207(3)(b).)

(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 Subsections (3)(c)(i), the commission shall make a record of the grounds for waiving, reducing, or compromising the penalty. (Utah Code Ann.  59-2-207(3)(c).)

DISCUSSION

Petitioner is appealing the penalty assessed pursuant to Utah Code Ann.  59-2-207 relating to late filing of Petitioner's Annual Tax Report for the tax year 2005.

Petitioner's representatives stated that Petitioner had made a good faith effort to comply with the filing requirement, but did not clearly understand the changes made by RESPONDENT REPRESENTATIVE 3. Petitioner has also experienced a change in personnel. Petitioner requests a waiver of the penalty.

Additionally, Petitioner states that if a penalty is assessed, it should be ten percent of the actual tax, not ten percent of an estimated tax liability. Petitioner asserts the actual value on the date of the hearing was \$\$\$\$\$.

Petitioner also cited Hales Sand & Gravel v. Auditing Division of the Utah State Tax Commission, 842 P.2d 887 (Utah 1992) for the proposition that if a reasonable basis exists for not paying a tax, it does not apply. What the Utah Supreme Court said was, “. . . the taxpayer can escape the penalty if he or she can show that he or she based the nonpayment of taxes on a legitimate, good faith interpretation of an arguable point of law.”

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Respondent's representatives pointed out that they received no return until the appeal was filed. Respondent argued internal personnel problems are not an excuse for failure to timely file a return. In this case, Petitioner not only failed to file a timely return, Petitioner did not request an extension. The Division may extend the time for filing until March 31. Petitioner did not file until June 1, 2005. This is the third year Petitioner was late.

DECISION AND ORDER

Utah Code Ann. §59-2-207 (2) requires the Respondent to assess and list property using the best information available in cases where the responsible party does not file the required statement. Petitioner did not file within the required time frame. Utah Code Ann. §59-2-207 (2)(a) or (b). Respondent used the best information to set a value. It then computed the penalty based on the best information available to it. Petitioner's argument that the penalty should be based on the value on the date of the hearing is rejected.

Petitioner's reliance on Hale is misplaced. There is no point of law regarding the non-payment of taxes that Petitioner argues.

After reviewing the circumstances in this matter, the Commission sustains the penalty in this matter. 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:

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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.

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

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