

05-0784
Centrally Assessed Property Tax
Signed 07/26/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-0784
)		
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 (by telephone)
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from Property Tax Division
RESPONDENT REPRESENTATIVE 3, 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 July 14, 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 within the statutory deadline. The following circumstances led to the assessment of the penalty. PETITIONER and its parent company, COMPANY, emerged from bankruptcy proceedings in August 2004. Because two separate sets of 2004 books needed to be reconciled, PETITIONER sought an extension of the March 1, 2005 statutory deadline to file its annual statement with the Division. As allowed by law, the Division granted PETITIONER an extension so that its annual statement was due on March 15, 2005.

PETITIONER admits that it mailed its return in on March 15, 2005, but that it lacked much of the information that is required to accompany the return, on the basis that its Form 10-K filed with the SEC had not been completed to the satisfaction of its outside auditors by that time. PETITIONER states that the SEC extended its deadline to submit the Form 10-K to May 15, 2005.

PETITIONER admits that it received an April 1, 2005, letter from Division employee TAX COMMISSION EMPLOYEE, in which TAX COMMISSION EMPLOYEE informed it that the Division would impose the penalty at issue unless PETITIONER forwarded the requested information immediately. Although PETITIONER emailed and sent some information to the Division on April 8, 2005, the Division claims that it did not consist of the information requested to accompany the annual statement. PETITIONER REPRESENTATIVE also states that the financial documents requested would be available this week to forward to the Division now that “upper management” had approved them as “finalized” statements.

The Division counters that even though the financial documents approved by upper management were not available until July 2005, PETITIONER should have sent in preliminary

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statements and information so that the Division could perform its assessment by the May 1 date required by law. The Division asserts that it needs and PETITIONER is legally required to submit the preliminary information by the statutory due date, even though the final Form 10-K information may be different. The Division states that it had to estimate PETITIONER'S 2005 taxable value without the pertinent information necessary to do so, including "balance information," "income statement information," "intangible property information," cash flow information," and "parent/subsidiary information."

APPLICABLE LAW

Pursuant to Utah Admin. Code §59-2-202(1)(a), a centrally assessed taxpayer shall, on or before March 1 of each year, file with the Division a statement:

- (i) signed and sworn to by the person, officer, or agent;
- (ii) showing in detail all real property and tangible personal property located in the state that the person owns or operates;
- (iii) containing the number of miles of taxable tangible personal property in each county:
 - (A) that the person owns or operates; and
 - (B) as valued on January 1 of the year for which the person, officer, or agent is furnishing the statement; and
- (iv) containing any other information the commission requires.

Pursuant to Subsection 59-2-202(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 59-2-202(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

Based on the testimony proffered at the Initial Hearing, it is apparent that PETITIONER did not have its Form 10-K prepared in time to file it with the Division before the expiration of the statutory due date. However, the testimony proffered indicates that PETITIONER did not attempt to provide the Division with preliminary information within the statutory deadline so that the Division could use this information in its assessment duties. For these reasons, the Commission finds that the Division properly imposed the penalty.

Although the Commission is authorized to waive, reduce, or compromise the penalty upon a showing of reasonable grounds, the Commission does not find the delay in finalizing the Form 10-K reasonable grounds to waive the penalty, as PETITIONER has not adequately explain why it could not provide preliminary information instead. In addition, PETITIONER has a history of violating the statutory filing deadline. For these reasons, the Commission denies PETITIONER'S request to waive the penalty under these circumstances.

DECISION AND ORDER

After reviewing the circumstances in this matter, the Commission finds that the penalty was properly imposed and that there is no basis for waiver of the penalty. Based on the foregoing, the penalty at issue is sustained and the Petitioner's appeal is denied. 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

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(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

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.

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Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner
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Marc B. Johnson
Commissioner