

05-1034
Audit
Signed 03/24/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-1034
)		
v.	)	Account No.	#####
)		
AUDITING DIVISION	)	Tax Type:	Income / Penalty & Interest
OF THE UTAH STATE)		
TAX COMMISSION,	)	Tax Periods:	1998
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Status Conference on March 15, 2006. Upon agreement of the parties, the Status Conference was converted into an Initial Hearing, as described in Utah Code Ann. §59-1-502.5.

For the 1998 tax year, the Division assessed tax, penalty, and interest because the Petitioner had not filed Utah income tax returns for these years. The Petitioner has since filed returns and agrees that he owes the tax amount, which he claims to have already remitted. The only remaining issue concerns the Petitioner's request for waiver of the penalties and interest that were imposed in the assessment.

The Petitioner states that he contracted with a CPA firm to prepare his income tax returns while he was working abroad in 1998. He explains that the CPA firm did not prepare a 1998 Utah income tax return for him to remit because it did not realize at that time that he was liable for Utah income taxes. After the Commission issued its assessment and discussions were held, the Petitioner's CPA received additional information concerning Utah law and advised him that he was, in fact, subject to Utah taxation for the 1998 tax year. Because of the Petitioner's reliance on his CPA, the Petitioner asks the Commission to waive the 10% failure to timely file penalty, the 10% failure to timely pay penalty, and the interest that the Division assessed.

The Division did not object to converting the Status Conference into an Initial Hearing. The Division did not present any arguments against waiving the penalties at issue, but did state that interest is generally not waived unless it arose due to the mistake of a Tax Commission employee.

APPLICABLE LAW

UCA §59-10-539(1) provides for the imposition of penalty and interest, pertinent parts as follow:

- (1) In case of failure to file an income tax return and pay the tax required under this chapter on or before the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return a penalty as provided in Section 59-1-401. For the purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

....

(8) In addition to the penalties added by this section, there shall be added to the tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments.

UCA §59-1-401 provides for the imposition of penalties for failure to file returns and pay tax when due, as follows:

(1) (a) The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return.

....

(2) The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:

(a) failure to pay any tax, as reported on a timely filed return;

(b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);

(c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency;

(d) failure to pay any tax within 30 days after the date the commission's order constituting final agency action resulting from a timely filed petition for redetermination or request for agency action is issued or is considered to have been denied under Subsection 63-46b-13(3)(b); and

(e) failure to pay any tax within 30 days after the date of a final judicial decision resulting from a timely filed petition for judicial review.

UCA §59-1-402(5) provides that “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the tax commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.”

Furthermore, in those situations where penalty and interest have been properly imposed, 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

The Petitioner agrees that he owed the amount of tax that the Division assessed for the 1998 tax year, and based on his reliance upon his CPA, he did not file a 1998 Utah income tax return or pay the 1998 tax due in a timely manner. Under these circumstances, the Division properly assessed penalties and interest in accordance with Sections 59-1-401 and 59-2-402. The Petitioner has asked the Commission to waive the penalties and interest under the circumstances, which the Commission is authorized to do upon a showing of reasonable cause pursuant to Section 59-1-401(10). Although penalties and interest may be waived upon certain circumstances, the criteria to waive interest are different than the criteria to waive penalties.

Interest is charged because the taxpayer has had the use of the tax dollars during a period when the state should have had that use. For this reason, interest is only waived if the imposition of interest arose from a Commission employee's error. There is no testimony or evidence proffered to show that a Tax Commission error caused the circumstances leading to the interest assessment. Accordingly, the Commission does not find reasonable cause to waive the interest at issue and, as a result, sustains the interest assessment.

On the other hand, the Commission considers a number of situations to be reasonable cause to waive a penalty, one such circumstance being a taxpayer's reliance upon competent tax

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professionals. The Petitioner explains that he relied upon the advice of a CPA that he was not required to file a Utah tax return for the 1998 tax year. Because he was working abroad during 1998, the Petitioner's reliance on the CPA's advice does not appear unreasonable. For these reasons, the Commission finds reasonable cause to waive the 10% failure to file and 10% failure to pay penalties for the 1998 tax year.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that the penalty and interest assessed for the 1998 tax year were properly imposed. Nevertheless, the Commission finds that reasonable cause exists to waive the penalties and orders that they be waived. However, the Commission denies the Petitioner's request to waive interest and sustains the Division's interest assessment. 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

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

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DATED this _____ day of _____, 2006.

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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay any balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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