

05-1058
Audit
Signed 07/28/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-1058
)		
v.	)	Account No.	#####
)		
AUDITING DIVISION	)	Tax Type:	Income / Penalty & Interest
OF THE UTAH STATE	)	Tax Years:	1995, 1996, 1997, 1998,
TAX COMMISSION,	)		1999, 2000, 2001 & 2002
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Representative
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 an Initial Hearing, as described in Utah Code Ann. §59-1-502.5, on July 20, 2006.

On March 31, 2005, Auditing Division (the "Division") issued Statutory Notices of Estimated Income Tax ("Statutory Notices") to the Petitioner for eight consecutive years, specifically tax years 1995 through 2002. The Division imposed its assessments on the basis that the Petitioner was domiciled in Utah and did not file Utah income tax returns and pay Utah income tax for these years. In addition to imposing additional income tax for each year, the Division also imposed a 10% penalty for failure to timely file a return, a 10% penalty for failure to timely pay tax, and interest for each year.

Subsequent to the Division's assessments, the Petitioner paid Utah income taxes for the eight tax years at issue. Although he believes he was domiciled in COUNTRY 1, not Utah, for all eight years, he does not wish to contest the domicile issue. However, the Petitioner asks the Commission to

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waive the penalties and interest that the Division assessed in association with the delinquent tax. In a letter dated December 30, 2005, the Petitioner asserts that the penalties for all years at issue total \$\$\$\$ and that the interest for all years at issue totals \$\$\$\$\$. The total amounts of penalties and interest assessed in the Statutory Notices are higher than the amounts listed in the Petitioner's letter. The Commission assumes that once the Petitioner filed returns and paid the tax due, that the amount of tax, penalties, and interest due changed from those amounts estimated by the Division in its Statutory Notices. Regardless, the Commission's decision, as explained below, is not dependent on the amounts of the penalties and interest at issue.

PETITIONER REPRESENTATIVE, the Petitioner's representative, explains that the Commission should waive the penalties and interest because the Petitioner had no idea that Utah would consider him a Utah domiciliary for income tax purposes for these years and because the Division did not inform him that it considered him so until approximately ten years after the first tax year at issue. PETITIONER REPRESENTATIVE also points out that the Petitioner believes he was domiciled in Utah until October 1994, at which time he moved to COUNTRY 1 and became domiciled there.

In a letter from the Petitioner dated December 30, 2005 letter, he lists a number of facts and circumstances to show why he believed he was domiciled in COUNTRY 1 and had not filed and paid Utah income taxes after the 1994 tax year. The Petitioner is a pilot employed primarily to fly international routes from either STATE 1 or STATE 2 to COUNTRY 2. After moving to COUNTRY 1 in 1994, the Petitioner admits that he kept a number of contacts with Utah. He kept a home to CITY, Utah so that he could exercise his visitation rights with a child from a previous marriage, but maintains that he was in Utah significantly less than 183 days a year. The Petitioner also maintained his Utah driver's license so that he could operate vehicles whenever he was in the United States. Although it is unclear if he was registered to vote in Utah, he admits

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that he voted in United States elections after 1994 via absentee ballot. He also admits that he maintained a post office box in Utah for his “stateside responsibilities.”

A number of the Petitioner’s contacts after 1994, however, are with COUNTRY 1. The Petitioner is a citizen of both the United States and COUNTRY 1, while his current wife is a citizen of COUNTRY 3. He owns a home in COUNTRY 1, at which all correspondence from his employer and social security statements are sent. Furthermore, he listed the COUNTRY 1 address not only on all of his United States federal income tax returns filed since the 1994 tax year, but also his FAA medical license documents. He holds an international driver’s license that he uses when operating vehicles in COUNTRY 2 and owns a vehicle that is registered in COUNTRY 1. He also votes in COUNTRY 1n elections via absentee ballot. Lastly, he purchases a burial plot in COUNTRY 1 in 1995, which he renewed in 2005.

For these reasons, the Petitioner believes that it is reasonable to understand why he would believe that his domicile was in COUNTRY 1, not Utah, for the years at issue and why he did not file and pay Utah income tax. In addition, he wishes the Division had addressed this issue with him much earlier, as the delay has resulted in substantial penalties and interest. For these reasons and because he was willingly paid Utah income tax in excess of \$\$\$\$ for the years at issue, he asks the Commission to waive the penalties and interest that are also assessed for these years.

The Division points out that the Petitioner has not contested its claim that he was domiciled in Utah for the tax years at issue and that he has paid Utah income tax for each of these years. The Division also points out that the information given by the Petitioner in his December 30, 2005 letter may be incomplete and that the Petitioner declined to complete and return a domicile questionnaire it sent to him. However, the Division states at the Initial Hearing that it will not give any recommendation to the Commission concerning the Petitioner’s request to waive the penalties and interest at issue.

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

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(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 authorized to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause. Utah Code Ann. §59-1-401(11).

DISCUSSION

The Petitioner does not contest that he owes Utah income tax for tax years 1995 through 2002. In fact, since the Division issued its Statutory Notices, the Petitioner has paid the tax due for each year at issue. As a result, the Commission will not decide the issue of whether the Petitioner was domiciled in Utah for any of the tax years at issue.

Because the Petitioner did not file Utah income tax returns and pay Utah income tax when due for each year at issue, the Division properly imposed the 10% penalty for failure to timely file a return, the 10% penalty for failure to timely pay tax, and interest for each year, in accordance with Sections 59-1-401 and 59-1-402. The Petitioner has asked the Commission to waive the penalties and interest due to the circumstances he has explained in his December 30, 2005 letter. The Commission has been granted the authority to waive penalties and interest upon a showing of reasonable cause, pursuant to Section 59-1-401(11).

Interest. Although penalties and interest may both be waived upon a showing of reasonable cause, the criteria for which the Commission waives interest are different than the criteria for which it waives penalties. Interest is charged because the taxpayer has had the use of the tax dollars during a period when the

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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.

The Petitioner points out that almost ten years expired between the time he moved to COUNTRY 1 and stopped filing and paying Utah income tax and the time the Division issued its Statutory Notices and alerted him that it considered him a Utah domiciliary. However, the Commission does not consider the length of time between these two events to be an error committed by the Tax Commission or one of its employees. The Commission notes that when a taxpayer does not file a tax return for a specific year, the Legislature has provided that no statute of limitations exists to assess tax that may be due. Furthermore, as the taxpayer did not contest the assessment of income tax for these years, the Commission must consider it to have been properly due. For these reasons, the Commission finds that no reasonable cause exists to waive the interest imposed on the tax due for the eight years at issue.

Penalties. On the other hand, the Commission considers that reasonable cause to waive a penalty may exist under a number of circumstances. In Utah State Tax Commission Publication 17 (Waivers – Reasonable Cause), the Commission provides that a penalty may be waived upon a showing of “clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.”

The location of one's domicile for income tax purposes is a complex issue for a person who has homes in and contacts with two different locations. Given the facts that the Petitioner listed in his December 30, 2005 letter, it is reasonable that the Petitioner could have believed that after October 1994, he was no longer domiciled in Utah and had no further Utah income tax liability. Accordingly, the Commission finds sufficient reasonable cause to waive all penalties at issue in this matter.

DECISION AND ORDER

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Based upon the foregoing, the Commission finds that the penalty and interest assessed for all years at issue were properly imposed. Nevertheless, the Commission finds that reasonable cause exists to waive the penalties and orders that both the 10% penalty for failure to timely file a return and 10% penalty for failure to timely pay tax be waived for all eight years at issue. However, the Commission denies the Petitioner's request to waive interest and sustains the Division's assessment of interest on the amounts of tax due for all eight years. 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.

DATED this _____ day of _____, 2006.

Kerry R. Chapman
Administrative Law Judge

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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

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
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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