

05-1153
Audit
Signed 12/16/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-1153
)		
v.	)	Account No.	#####
)		
AUDITING DIVISION	)	Tax Type:	Income / Penalty & Interest
OF THE UTAH STATE)		
TAX COMMISSION,	)	Tax Periods:	2001, 2002, & 2003
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, from the Auditing Division
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 December 14, 2005. For all three years at issue, 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 for these years and paid all assessments. The only remaining issue concerns the Petitioner's request for waiver of penalties and interest associated with the assessments. Upon agreement of the parties, the Status Conference was converted into an Initial Hearing, as described in Utah Code Ann. §59-1-502.5, which was held to address the waiver issue.

The Petitioner states that he contracted with a CPA firm in Utah to prepare his income tax returns, beginning, he believes, with the first year at issue in this appeal. Because he has homes in both Utah and STATE and is self-employed, he did not question his CPA when the CPA determined that he was a STATE domiciliary and, as a result, not required to file Utah returns, even though he had filed such returns in the past.

After the Commission issued its assessment and discussions were held, the Petitioner's CPA advised him that he was domiciled in Utah and subject to Utah taxation for the years at issue. The Petitioner's CPA has subsequently prepared Utah returns for the Petitioner for the three years at issue. The Petitioner has filed these returns and paid all amounts owing from the assessments. The Division confirms that it has accepted the returns filed by the Petitioner. Because of his CPA's mistake, however, the Petitioner asks the Commission to waive the 10% failure to timely file penalties, the 10% failure to timely pay penalties, and the interest that the Division assessed.

The Division states that prior to the years at issue, the Petitioner filed his returns and paid the tax due in a timely manner. Accordingly, it does not appear that penalties have previously been waived.

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 income tax that the Division assessed and that he did not file Utah tax returns nor pay the tax due timely for the three years at issue based on the advice of his CPA. 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

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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, two of them being a consideration of the taxpayer's prior tax payment history and a consideration of the taxpayer's reliance upon competent tax professionals. The Petitioner explains that he relied upon the advice of a Utah CPA that he was not required to file a Utah tax return for the three years at issue. Because he has a home in STATE and is self-employed, the Petitioner's reliance on the CPA's advice does not appear unreasonable. Furthermore, the Division states that the Petitioner's record does not show other delinquencies. For these reasons, the Commission finds reasonable cause to waive the 10% failure to file and 10% failure to pay penalties for all three years at issue.

DECISION AND ORDER

Based upon the foregoing, the Commission finds the penalty and interest assessed for the three tax years at issue were properly imposed. Nevertheless, the Commission waives the penalties that were imposed for all three years, upon a finding of reasonable cause to do so. However, the Commission denies the Petitioner's request to waive interest and sustains the interest assessment for all three 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

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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 _____, 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.

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

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from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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