

05-1418
Audit
Signed 08/09/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 AND PETITIONER 2,)	ORDER FROM INITIAL HEARING
)	
Petitioners,)	Appeal No. 05-1418
)	
v.)	Tax Type: Income Tax
)	
AUDITING DIVISION OF THE UTAH)	Account No. #####
STATE TAX COMMISSION,)	Tax Period: 1998 - 2003
)	
Respondent.)	Judge: Rees
)	

This matter arises from audit assessments issued against the Petitioners for failure to file Utah tax returns in tax years 1998-2003. This matter came before the Commission in an Initial Hearing on July 10, 2006.

BACKGROUND

PETITIONER 1 explained that he retired in about 1995 and that he made a move to STATE around 1997 or 1998. The PETITIONER'S were separated at some point within this period and eventually divorced in 2006.

PETITIONER 1 did not present evidence that he had changed his domicile from Utah to STATE. The facts and testimony presented establish the following:

- (1) PETITIONER 1 attempted to acquire STATE property through a tax free exchange, but that he ended up renting in STATE. Petitioners maintained their home in Utah, which was held in a family trust.
- (2) PETITIONER 1 and PETITIONER 2 both held Utah drivers licenses throughout the audit period. Neither had a STATE license.
- (3) There was at least one vehicle registered in Utah under PETITIONER 1's name

during the audit period. PETITIONER 1 stated that this vehicle was operated by his son, but registered in his name for insurance purposes.

- (4) The PETITIONER'S both voted in Utah throughout the audit period.
- (5) Petitioners' mortgage, savings and other financial records were all mailed to their Utah address throughout the 1998-2003 period.
- (6) Petitioners filed joint federal tax returns for each year, listing their Utah address as their residence. They used a Utah tax preparer.

Prior to the hearing, the PETITIONER'S filed their Utah returns for all years. The returns have been verified and posted. The tax, penalties (late file and late payment penalties) and interest due as of July 31, 2006 is as follows:

Year	Tax	Penalty	Interest
1998	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
1999	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2000	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2001	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2002	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2003	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

It was discovered at the hearing that all audit assessments and hearing notices were directed to PETITIONER 1's Utah address. Because PETITIONER 2 had no notice of the assessments or hearing, PETITIONER 1 was given an opportunity to seek her Power of Attorney to represent her in this matter. The Power of Attorney form was received on July 13, 2006.

RELIEF REQUESTED

PETITIONER 1 asks for relief from the penalties and interest associated with the assessments. The Tax Commission has authority to waive or reduce penalty and interest assessments for reasonable cause. Pertinent to Petitioner's circumstances, grounds for waiver include a taxpayer's reliance on

erroneous advice from the Tax Commission's staff, a taxpayer's reliance on a competent tax adviser who advised him that not Utah return was necessary, or waiver based on compliance history.

Regarding grounds for a waiver on the basis of erroneous advice from the Tax Commission staff, PETITIONER 1 claims that he called the Tax Commission before moving to STATE to ask how to change his residence. He claims that he was merely instructed to file returns in his new state of residence. Because STATE has no personal income tax, he did not file in STATE.

For a waiver based on erroneous advice from the Tax Commission, the taxpayer must not only assert that he received bad advice, but also substantiate his claim. In this case, there is no record of any discussion between PETITIONER 1 and Tax Commission staff. Consequently, there is no way to verify the substance of the discussion or whether any staff member advising PETITIONER 1 had sufficient information about his continued or ongoing ties to Utah. Therefore, PETITIONER 1 has not made a case for reliance on erroneous information or advice from the Tax Commission.

PETITIONER 1 did not affirmatively assert a claim for relief on the basis of his reliance on a competent tax preparer, but the issue arose during the hearing. PETITIONER 1 stated that the joint federal returns were prepared by a tax advisor. Upon inquiry, PETITIONER 1 stated that his tax preparer is not a CPA or accountant, but a financial planner doing business in Utah. It is not clear from PETITIONER 1's testimony how a Utah tax preparer could have overlooked the state return, given that the couple filed under a Utah address and PETITIONER 2 apparently earned income in Utah during the period in question. Nor is it clear that the tax preparer actually advised the PETITIONERS that no Utah returns were required. Under these circumstances, there is no basis for waiving the penalties and interest due to incompetent advice from a tax preparer.

Finally, in considering the taxpayer's request for waiver of the penalty and interest, the Commission can consider the taxpayers' compliance history. The Division states that Petitioners did not file Utah returns from 1991 through 1995. In response to an audit assessment, Petitioners filed their returns and the late filing penalty was abated. Petitioners' overall compliance history does not warrant a waiver of penalty and interest under the circumstances presented here.

DECISION

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The Petitioner has not established ground for relief from the penalties and interest associated with the assessments. Therefore, waiver or abatement is denied.

NOTE: 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

If a Formal Hearing is not requested, the balance due on this account must be paid within thirty days of the date of this order. Failure to do so may result in a an additional late payment penalty.

DATED this _____ day of _____, 2006.

Irene Rees, 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

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Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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