

05-1506  
PENALTY AND INTEREST  
TAX YEARS: 1996, 1999, 2000, 2001, 2002, 2003, 2004  
SIGNED: 03-28-06

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No.    05-1506
v.	)	
	)	Account No.
TAXPAYER SERVICES DIVISION,	)	
UTAH STATE TAX COMMISSION,	)	Tax Type:    Penalty & Interest
	)	
Respondent.	)	Presiding:    Jensen

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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER  
For Respondent:    RESPONDENT REP. 1, from the Taxpayer Services Division  
                    RESPONDENT REP. 2, from the Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code Ann. 59-1-502.5 on January 12, 2006. The Petitioner requested reconsideration of a decision by the Taxpayer Services Division (the "Division") denying waiver of penalties for tax years 1996, 1999, 2000, 2001, 2002, 2003, and 2004. The Petitioner does not dispute taxes themselves or interest on unpaid taxes, but does request relief from penalties associated with late filing and late payments. As basis for waiver for penalties, Petitioner cited medical problems, financial difficulties, various moves with resultant address change issues, identity theft, marital

Appeal No. 05-1506

problems, and the loss or theft of a briefcase containing tax documents.

The Division representative provided two reasons for denial of the Petitioner's waiver request. First, the Petitioner's requested reasons for waiver either did not support a waiver or were not in the same time frame as tax deadlines. Second, even if the taxpayer's reasons otherwise supported a penalty waiver, the Petitioner's compliance history did not support a waiver.

At hearing, the parties concluded that in addition to the Petitioner's waiver request, there was a question regarding payments to the Tax Commission and whether all of the Petitioner's payments had been properly credited. There was particular concern regarding a \$\$\$\$ check that Petitioner sent to the Tax Commission and whether the Petitioner's bank had honored the check. Accordingly, the Administrative Law Judge requested the parties to present supplemental documentation regarding the \$\$\$\$ check. There was also some confusion regarding other taxes, fees, and payments for the various issues. The Division agreed to provide an accounting of the Petitioner's record in spreadsheet format. Following the parties submission of additional information, the Administrative Law Judge held a March 8, 2006 continuation of the initial hearing to allow the parties to question or comment upon the additional evidence.

In the March 8, 2006 continuation of the initial hearing, the parties agreed that the check for the Petitioner's \$\$\$\$ payment had not cleared the Petitioner's bank and that the Division was correct in removing the \$\$\$\$ credit to the Petitioner's account that the Division had initially made upon receipt of the \$\$\$\$ check. The parties also reviewed the detailed spreadsheet prepared by the Division. Regarding the spreadsheet numbers, the parties gained general agreement regarding the Petitioner's outstanding obligations. There were no claimed payments that were not properly

Appeal No. 05-1506

credited as indicated on the spreadsheet. One concern was that the spreadsheet showed a balance due of \$\$\$\$\$, while the Division's October 4, 2005 statutory notice showed a balance of \$\$\$\$\$. The parties determined that the October 4, 2005 statutory notice listed taxes for the 1995 and 2004 tax years. This created confusion, because the Petitioner did not list tax year 1995 on his Petition even though there were taxes, penalties, and interest owing for that year. The Division likewise did not list tax year 2004 in the caption on its statutory notice but did agree that the \$\$\$\$\$ figure in the body of the letter included all outstanding state balances for tax years 1995, 1996, 1999, 2000, 2001, 2002, 2003, and 2004. The Administrative Law Judge noted a few minor errors on the Division spreadsheet that, when taken in the aggregate, showed a total less than the Petitioner's obligations. The Division indicated that it would stand by the figures in its spreadsheet even if those numbers indicated an error in the taxpayer's favor.

In the March 8, 2006 hearing, the Parties gained general understanding and agreement regarding all of the figures claimed by the Division. The Petitioner requested, and the Division agreed, to discuss all of the tax years 1995, 1996, 1999, 2000, 2001, 2002, 2003, and 2004 and to include a discussion in this Order of the total amount owing for these years even though all of the years are technically not a part of this appeal. Of these years, four have an outstanding balance. As of the March 8, 2006 hearing, the outstanding balances, including tax, penalties, and interest, were as follows:

Tax Year 1995 –	\$\$\$\$\$
Tax Year 2000 -	\$\$\$\$\$
Tax Year 2001 -	\$\$\$\$\$
Tax Year 2004 -	<u>\$\$\$\$\$</u>
Total	\$\$\$\$\$

Appeal No. 05-1506

The Petitioner did not dispute that he owes the taxes themselves or interest on unpaid balances. He has no argument with the computation of these amounts. His petition seeks reversal of penalties only.

In addition to providing clarity regarding outstanding balances, the Division's spreadsheet also provided an overview of the Petitioner's compliance history. The parties reviewed the filing history and gained general agreement regarding when the Petitioner had timely filed or paid taxes for the 13 years up to and including tax year 2004. In those 13 years, there are none in which the Petitioner has filed and paid taxes on time. The compliance history for tax years 1992 to 2004 can be summarized as follows:

- Tax Year 1992 – Filed and paid late
- Tax Year 1993 – Filed and paid late;
- Tax Year 1994 – Filed and paid late;
- Tax Year 1995 – Filed on time but paid late;
- Tax Year 1996 – Filed and paid late;
- Tax Year 1997 – No return filed; no payment made;
- Tax Year 1998 – No return filed; no payment made;
- Tax Year 1999 – Filed and paid late;
- Tax Year 2000 – Filed and paid late;
- Tax Year 2001 – Filed and paid late;
- Tax Year 2002 – Filed and paid late;
- Tax Year 2003 – Filed and paid late;
- Tax Year 2004 – Filed and paid late.

The Petitioner's 2005 tax return is not yet due and it was thus not included in information from the Division.

APPLICABLE LAW

The Tax Commission is granted the authority to waive, reduce, or compromise

Appeal No. 05-1506

penalties and interest upon a showing of reasonable cause. Utah Code Ann. 59-1-401(11).

#### DISCUSSION

Utah State Tax Commission Publication 17, available at [www.tax.utah.gov](http://www.tax.utah.gov) under the tab for Forms and Publications, provides information and general guidance regarding waivers of penalties on state taxes. Publication 17 explains that for serious illness, for example, the illness must have occurred on or immediately prior to the due date of the return. This supports a general policy that the extraordinary events forming the basis for a waiver must be the actual cause of the inability to comply with tax laws. Financial difficulties are generally not reason for a waiver. Publication 17 also explains that the Tax Commission will consider the taxpayer's compliance history in reviewing a waiver request.

Reviewing the facts in this matter, the Petitioner has provided evidence of several occurrences of health, record management, and business problems. While these problems were significant, the evidence presented does not place any of the problems to a time when a tax deadline was imminent. Thus, these problems do not support a waiver because there is no showing that the illness or other issues "occurred on or immediately prior to the due date of the return." Because the Petitioner has a 13-year history of late or absent tax payments, the evidence in this case does not support the conclusion that the Petitioner would have filed and paid on time in 2004 or any other year if not for extraordinary illness.

The Petitioner did indicate a desire to bring his past tax years current and to avoid future penalties. In that regard, the Tax Commission supports the conclusion reached in hearing that if the Petitioner cannot pay past years and present years at the same time, he is better off to put his

Appeal No. 05-1506

resources into filing and paying 2005 taxes on time to avoid penalty for that year. Finally, the Petitioner may contact RESPONDENT REP. 1 at (801) 297-6305 if a payment plan would be helpful with regard to past years' taxes.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause not been shown to justify a waiver of penalties or interest in this case. 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.

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Clinton Jensen  
Administrative Law Judge

Appeal No. 05-1506

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 the Petitioner does not request a Formal Hearing within the thirty-days as discussed above, failure to pay the amount of deficiency that results from this order may result in an additional penalty.

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