

06-0384
Penalty & Interest
Signed 02/13/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 06-0384
v.)	
)	Account No. #####
TAXPAYER SERVICES DIVISION,)	
UTAH STATE TAX COMMISSION,)	Tax Type: Penalty & Interest
)	
Respondent.)	Presiding: Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, CPA

For Respondent: RESPONDENT REPRESENTATIVE, 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 August 17, 2006.

APPLICABLE LAW

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(11).

DISCUSSION

Petitioner is appealing penalties totaling \$\$\$\$\$ assessed for the late payment and filing of tax for the 2004 tax year.

Petitioner's representative explained that in December 2004, he sold a piece of property in a manner that the sale qualified for a 1031 exchange and would thus not lead to a taxable income from the sale of the property. The transaction was set to close within six months. Before the April 2005 deadline for filing of the 2004 tax return, the Petitioner sought tax advice from PETITIONER REPRESENTATIVE, CPA. As of April 2005, there was no indication that there might be a problem with the 1031 exchange. On the basis of the information available at the time of the meeting with the Petitioner, PETITIONER REPRESENTATIVE made preliminary tax calculations and concluded that the Petitioner had no Utah state tax liability and, in fact, would be receiving a refund. On that basis, PETITIONER REPRESENTATIVE advised the Petitioner that there was no need to make any tax payments and that the Petitioner should just conclude the 1031 exchange so that he would have all necessary tax information and then file his 2004 Utah tax return within the time allowed for automatic extension.

In May 2005, the Petitioner began to suspect problems in the party selling the replacement property in the 1031 exchange. In the months that followed, those problems blossomed into a breach of contract by the party selling the property that was to complete the 1031 exchange. The Petitioner explained that as a result of the breach by the selling party, the Petitioner lost the benefit of the 1031 exchange. This had the effect of substantially increasing the Petitioner's income tax for the 2004 tax year. The Petitioner did not dispute the increased tax for 2004 and ultimately filed a return reflecting the increased taxes. But by the time the Petitioner knew that the 1031 exchange had failed and was able to file a tax return for 2004 tax year, the Petitioner was late in filing his 2004 return and had amassed penalties of \$\$\$\$\$.

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Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs/pub-17.pdf>, explains the factors that the Commission will consider in reviewing waiver requests. This publication indicates that, under some circumstances, reliance on a competent tax adviser can be good cause to waive a penalty. Unobtainable records can also form the basis for a penalty waiver. Publication 17 explains that the Tax Commission will also consider a taxpayer's compliance history in ruling on a waiver request.

Applying the principles of Publication 17 to this case, it is apparent that the Petitioner timely sought tax advice for the 2004 tax year and relied on that advice in not filing or making a tax payment by the April 2005 deadline for the 2004 tax year. Because the 1031 exchange was in an uncertain status throughout much of 2005, there is also an element of unobtainable records and information necessary to file the 2004 return.

The Petitioner's filing history is a cause for concern. The Petitioner filed and paid his 1999 taxes late and paid an extension penalty of \$\$\$\$\$. For the 2000 tax year, the Petitioner again filed and paid late and thus paid an extension penalty of \$\$\$\$\$. The Commission does note that the Petitioner timely paid and filed his 2001, 2002, and 2003 state tax returns. In addition to causing a history with late filings, this history shows that the Petitioner had reason to be familiar with extension penalties and the concept that while there is an automatic extension for filing of taxes, there is no such extension for payment of taxes.

Because the Petitioner was in a position in April 2005 that would have caused difficulty in predicting the loss of his proposed 1031 exchange, there exists reason to waive a portion of the penalties imposed for the 2005 tax year. However, the Petitioner's filing history shows that a

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few months after April 2005, the Petitioner was in a position to know that the 1031 exchange was in jeopardy and that there was a reasonable likelihood that he would owe taxes for the 2004 tax year. It is apparent that notwithstanding the knowledge from prior tax years and the assistance of competent tax advice, the Petitioner did not make payment for 2004 until late 2005. Because the Petitioner was in a position to prevent further penalty by making payment at some time earlier in 2005 but did not do so, there is not sufficient good cause to waive all of the penalties involved. Weighing the factors supporting waiver with the Petitioner's tax compliance history, the Commission finds good cause to waive one half of the Penalties imposed for the 2004 tax year. This approximates the time in which it would have been difficult for the Petitioner to know that the proposed 1031 exchange was likely to fail.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of one half of the penalty associated with the 2004 individual income tax return. 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

Appeal No. 06-0384

Salt Lake City, Utah 84134

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

DATED this _____ day of _____, 2007.

Clinton Jensen
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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
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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