

06-0681
Income Tax
Signed 03/12/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 06-0681
v.)	
)	Account No. #####
TAXPAYER SERVICES DIVISION OF)	
THE UTAH STATE TAX)	Tax Type: Income Tax
COMMISSION,)	Audit Period: 2004
)	
Respondent.)	Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *pro se*, via telephone

For Respondent: RESPONDENT REPRESENTATIVE, from the Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on November 27, 2006. The parties were represented as indicated above. Petitioner is appealing the penalty assessed for failure to timely file and pay taxes for the 2004 tax year. Petitioner does not challenge the assessment of tax, or the interest.

Petitioner is a retired tax law professor and member of the (X). He files tax returns in more than one state. He said he had a bad year in 2004. He said he had recently

retired and had moved from STATE to Utah. He said he had liquidated his SEP-IRA in one year. He said his former employer's pension plan did not withhold a sufficient amount.

Petitioner argued the circumstances establish reasonable cause to grant him a waiver of the penalty. He said he was ill at the time of filing due to knee surgery. He stated between March and October of 2005 he had pneumonia, two knee operations, and diverticulosis. He offered no medical records supporting his contentions, nor did he state how his health prevented him or his wife from filing.

Petitioner said he was in COUNTRY throughout 2004. He said his income was from different sources than in previous years. He said these circumstances prevented accurately estimating his tax liability. He argued this constituted reasonable cause for a waiver.

In addition, Petitioner said the instructions for form TC40 B indicated he was entitled to a substantial tax benefit for retirement income. He said when he completed the form the result was unfavorable instead. He said he remains confused by the form. He argued this established reasonable cause.

Finally, Petitioner's May 11, 2004 mailing contained a check for \$\$\$\$\$. The letter stated the check was to be cashed only if Respondent was willing to accept it as full satisfaction. The check was cashed. At the hearing, Petitioner asked that Respondent be held to the acceptance of \$\$\$\$\$.

Petitioner acknowledged the law and the facts do not help him. He asked the State be required to accept the \$\$\$\$\$ payment as full settlement on moral grounds.

Respondent stated it did not see the facts as establishing reasonable cause to waive the penalties. It looked to account history. It said Petitioner had been assessed penalties in 1998 and 2000.

Respondent said it received a payment of \$\$\$\$\$ on April 15, 2005. It received a payment of \$\$\$\$\$ on October 13, 2005. Petitioner made an additional payment of \$\$\$\$\$ on October 17, 2005. Petitioner filed his 2004 return on December 9, 2005. Respondent accepted it. Accompanying the return was a payment of \$\$\$\$\$. Petitioner had withholding of \$\$\$\$\$. Petitioner also had a credit for payment of tax to another state in the amount of \$\$\$\$\$. Petitioner's tax liability was \$\$\$\$\$. The payments and credits total \$\$\$\$\$. Respondent assessed penalties for failure to file and failure to pay, totaling \$\$\$\$\$, and a \$\$\$\$\$ fee for a lien.

Because the Petitioner has not cashed the warrant for \$\$\$\$\$, Respondent still has that amount to credit to Petitioner's account. This leaves \$\$\$\$\$ due, plus any interest that has accrued.

APPLICABLE LAW

Utah Code Ann. §59-1-401 (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."

Utah Code Ann. §59-1-401 (2) "The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:

••••

(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);

Utah Code Ann. §59-1-401 (4)

(a) In case of an extension of time to file an individual income tax or corporate franchise tax return, if the lesser of 90% of the total tax reported on the tax return or 100% of the prior year's tax is not paid by the due date of the return, not including extensions, a 2% per month penalty shall apply on the unpaid tax during the period of extension.

(b) If a return is not filed within the extension time period as provided in [Section 59-7-505](#) or [59-10-516](#), penalties as provided in Subsection (1) and Subsection (2)(b) shall be added in lieu of the penalty assessed under this Subsection (4) as if no extension of time for filing a return had been granted.

Utah Code Ann. §59-1-401(11) “Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.”

DECISION AND ORDER

Based on the evidence, the Commission denies Petitioner’s request for a waiver of penalties. 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.

Appeal No. 06-0681

R. Spencer Robinson
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

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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