

06-0927
Income
Signed 05/02/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
	)	ORDER	
Petitioners,)		
	)	Appeal No.	06-0927
v.)		
	)	Account Nos.	#####, #####
AUDITING DIVISION OF THE	)	Audit Periods:	2000-2003
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income
)		
Respondent.	)	Judge:	Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE, CPA
 PETITIONER 1
For Respondent: RESPONDENT REPRESENTATIVE, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on April 2, 2007. The matter had originally been set for a Telephone Status Conference and was converted to the Initial Hearing with the approval of the parties. Petitioners are appealing penalties and interest assessed with an audit for tax years 2000 through 2003. The penalties, assessed for years 2000 through 2002 only, were 10% failure to file and 10% failure to pay penalties (See 59-1-401). Interest assessed with the audit continues to accrue on the unpaid balance, but has been adjusted based on the revised tax amounts.

APPLICABLE LAW

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. Utah Code Sec. 59-1-401(11).

DISCUSSION

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Petitioner argues that the penalties should be waived based on the fact that Petitioners had been relying on their prior tax advisor, who had insisted that Petitioners should be filing and paying state income taxes in STATE, which was the state from where they received their retirement income. Petitioners had moved to Utah in 2000 and were required to file Utah Individual Income tax returns. They had relied on this advice which was in error. When the former employer paying out the retirement informed Petitioners they should be filing in the state in which they resided, they found a new tax preparer and have been filing in Utah. Respondent's representative indicated the penalties and interest were assessed pursuant to the statute for late filing and late paying. As of the date of the hearing they had filed Utah returns for all years at issue and Respondent has accepted the returns and posted them over the audit.

Interest is assessed when taxes are not paid or underpaid to compensate the state for the time value of money. Interest is generally waived only in the event the Tax Commission, or Tax Commission employee error gave rise to the late payment or underpayment.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the penalties associated with Petitioners' individual income tax for tax years 2000-2003. Cause has not been shown for waiver of the interest. 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

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

DATED this _____ day of _____, 2007.

Jane Phan
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: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

JKP/ckl/06-0927.int