

06-1176  
Individual Income Tax  
Signed 04/27/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)			
	)	<b>ORDER</b>		
Petitioner,	)			
	)	Appeal No.	06-1176	
v.	)			
	)	Tax Type:	Individual Income Tax	
AUDITING DIVISION OF THE	)	Account No:	#####	
UTAH STATE TAX COMMISSION,	)	Tax Year:	1998, 2000 through 2003	
	)			
Respondent.	)	Judge:	Chapman	

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**Presiding:**  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER  
                  PETITIONER REPRESENTATIVE, CPA  
For Respondent: RESPONDENT REPRESENTATIVE, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Telephonic Status Conference on April 26, 2007, at which time the parties agreed to convert the conference to an Initial Hearing.

The Petitioner is appealing Auditing Division's (the "Division") assessment of penalties (but not the tax and interest) that were imposed for the 1998, 2000, 2001, 2002, and 2003 tax years. On August 15, 2006, the Division issued Statutory Notices of Estimated Income Tax ("Statutory Notices") to the Petitioner, in which it imposed additional tax, penalties, and interest for the five years at issue, as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
1998	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2000	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2001	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2002	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2003	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
		\$\$\$\$\$		

APPLICABLE LAW

UCA §59-1-401(11) authorizes the Commission to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause.

DISCUSSION

The Petitioner failed to file Utah income tax returns for the 1998, 2000, 2001, 2002, and 2003 tax years. For each of these years, the Division assessed a 10% penalty for failure to timely file a return and a 10% penalty for failure to timely pay the taxes that were due. The Petitioner asks the Commission to waive the \$\$\$\$ in penalties that were assessed for these years because of serious health problems she experienced that first arose in 1999.

The Petitioner was formerly employed as a psychiatric nurse at ( X ). In the late summer of 1999, a patient attacked the Petitioner. Due to injuries she incurred and the pain that ensued, she missed a great deal of work and was on medication. In November 2002, the Petitioner's doctors discovered that she had incurred broken bones in the attack that had not previously been diagnosed. In late 2002, the Petitioner had the first of seven surgeries that were required not only to address the initial fractures, but also to address complications that arose from the initial surgery.

From the summer of 1999, when the Petitioner was attacked, to November 2002, when the first surgery occurred, the Petitioner was able to live at home. During this period, the Petitioner was highly medicated, in pain, and eventually could not work. From late 2002 through 2005, the Petitioner resided in a nursing home and for much of the time, was in a semi-conscious state and was unable to communicate.

The Petitioner proffered that prior to 1999, she had always filed her tax returns timely. However, the Petitioner does not remember why she failed to file her 1998 return, which was due in April 1999, several months prior to her attack. It also appears from the evidence available at the Initial Hearing that the Petitioner filed her 1999 tax return, which was due in April 2000, in a timely manner. For the 2000 through 2003 tax years, however, the Petitioner stated that she thought a friend was seeing to her tax responsibilities, but later found out that her friend had neglected to file her returns. Based on these circumstances, the Petitioner asks the Commission to waive the penalties associated with all years at issue.

Because the Petitioner had timely filed her tax returns for periods prior to 1998, the Commission will waive the penalty imposed for the 1998 tax year in recognition of the Petitioner's compliance history to that point. In addition, beginning in November 2002, the severity of the Petitioner's health issues appears to have increased to the point where the Petitioner had to reside in a nursing home, had to have multiple surgeries, and was semi-conscious for various periods of time. Because of the Petitioner's semi-conscious state and the extent of her health issues after November 2002, the Commission will waive the penalties associated with the 2002 return, which was due in April 2003, and with the 2003 return, which was due in April 2004.

However, when a person has ongoing health issues, the Commission believes it is reasonable for that person to arrange to have someone attend to his or her tax responsibilities. The Commission recognizes that the Petitioner thought a friend was filing her tax returns. However, for that period when the Petitioner was able to reside at home and was not semi-conscious, the Commission does not find it reasonable that the Petitioner never inquired about her taxes or why her friend did not prepare returns for her signature. For these reasons, the Commission does not find reasonable cause to waive the penalties associated with returns due before November 2002. Accordingly, the Commission denies the request to waive penalties

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associated with the 2000 return, which was due in April 2001, and with the 2001 return, which was due in April 2002.

DECISION AND ORDER

Based upon the foregoing, the Commission finds reasonable cause to waive all penalties imposed for the 1998, 2002, and 2003 tax years. However, the Commission denies the Petitioner's request to waive penalties imposed for the 2000 and 2001 tax years. 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 \_\_\_\_\_, 2007.

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Kerry R. Chapman  
Administrative Law Judge

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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 a Formal Hearing is not requested as discussed above, failure to pay any remaining balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

*KRC/06-1176.int*