

06-1290
Income Tax
Signed 05/30/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
	)	ORDER	
Petitioners,)		
	)	Appeal No.	06-1290
v.)		
	)	Account No.	#####
AUDITING DIVISION OF THE	)	Tax Years:	2000, 2003
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income Tax
)		
Respondent.	)	Judge:	Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: 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 May 3, 2007. The matter had been scheduled for a Telephone Status Conference on that date, but was converted to the Initial Hearing with the approval of the parties. This decision is issued based on the information in the file, the information submitted at the hearing and a post hearing submission from each party. At the Hearing, Petitioner indicated he had conceded tax year 2003. Petitioner's appeal was limited to the penalties and interest assessed with the audit deficiency for tax year 2000. The penalties were 10% failure to file and 10% failure to pay penalties totaling \$\$\$\$\$. Interest accrued from the due date of the 2000 return until the balance was paid. As of the date of the Statutory Notice of Estimated Income Tax, which was October 10, 2006, the amount of interest had been \$\$\$\$\$. Petitioner paid an amount equal to the tax deficiency indicted in the audit on May 16, 2007.

APPLICABLE LAW

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. (b) This Subsection (1) does not apply to amended returns. Utah Code Sec. 59-1-401(1).

The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for (a) failure to pay any tax, as reported on a timely filed return; (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 Sec. 59-1-401(2).

Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received. Utah Code Sec. 59-1-402 (5).

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(1).

Except as otherwise provided in this section, the amount of any tax imposed by this chapter shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed), and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. . . . (3) The tax may be assessed at any time if: (a) no return is filed . . . Utah Code Sec. 59-10-536(1) & (3).

DISCUSSION

Petitioners request that both the penalties and interest be waived for the 2000 tax filing. Petitioners point out that they had filed as residents of Utah, individual income tax returns for many years prior to 2000 and subsequent years. However, they indicated that the first notification from the Tax Commission

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that they had not filed the 2000 return occurred in October 2006. It was Petitioners' position that they should have been contacted by the Tax Commission much sooner about the missing return. Petitioner also points out that he had received a Statement of Account for Delinquent Taxes on February 28, 2007, which demanded payment in full by March 10, 2007, even though the amount was in appeal.

Respondent confirmed that Petitioners had been filing Utah returns prior to the years at issue. Respondent's representative reported that Petitioners had filed Utah returns from 1994 through 1999 and that all the returns were filed either on or before the due date. She also notes that the returns for these prior years all resulted in a refund, while the subject year indicated tax due.

Respondent's representative states that the account had been reviewed because of the audit issue that arose for the 2003 year. That was when it was discovered that there was no record of a tax return being filed in 2000.

The Commission considers the account history when determining whether penalties should be waived. In this matter this would be considered a first time error and Petitioner otherwise had a good filing record.

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 caused the late payment or an underpayment. In the case of a non-filing, the Commission has not considered the length of time from when the return was due to the time the error is caught to be a Tax Commission error for purpose of waiver of the interest. The Commission notes that there would have been an indication to Petitioners that the return had not been processed based upon the fact that the check for payment did not clear their bank. Additionally, Petitioners would have continued to have the use of these funds until they were finally paid.

Considering the Statements of Account for Delinquent Taxes that were issued to Petitioner

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while the appeal was in progress, this was an event that occurred during implementation of a new computer system. Whether or not this was an error on the part of the Tax Commission, it did not cause 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 in the amount of \$\$\$\$\$\$ relating to Petitioners' income tax for the year 2000. Sufficient cause was not shown for waiver of the interest for that year. 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.

Jane Phan
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: 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.

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