

06-1461
Income / Penalty & Interest
Signed 04/16/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	06-1461
)		
v.	)	Account No.	#####
)		
AUDITING DIVISION	)	Tax Type:	Income / Penalty & Interest
OF THE UTAH STATE	)	Tax Years:	2003 & 2004
TAX COMMISSION,)		
	)	Judge:	Chapman
Respondent.)		

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, from the Auditing Division
RESPONDENT REPRESENTATIVE 2, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Telephone Status Conference on April 3, 2007, which was converted to an Initial Hearing, as described in Utah Code Ann. §59-1-502.5.

The Petitioner is appealing Auditing Division's (the "Division") assessment of penalties and interest for the 2003 and 2004 tax years. On October 10, 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 two years at issue, as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2003	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2004	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
				\$\$\$\$\$

APPLICABLE LAW

Utah Code Ann. §59-10-539(1) provides for the imposition of penalty and interest associated with delinquent individual income tax, pertinent parts as follow:

(1) In case of failure to file an income tax return and pay the tax required under this chapter on or before the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return a penalty as provided in Section 59-1-401. For the purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

....

(8) In addition to the penalties added by this section, there shall be added to the tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments.

UCA §59-1-401 provides for the imposition of penalties for failure to file returns and pay tax when due, as follows:

(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.

....

(2) 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);

(c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency;

(d) failure to pay any tax within 30 days after the date the commission's order constituting final agency action resulting from a timely filed petition for redetermination or request for agency action is issued or is considered to have been denied under Subsection 63-46b-13(3)(b); and

(e) failure to pay any tax within 30 days after the date of a final judicial decision resulting from a timely filed petition for judicial review.

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UCA §59-1-402(5) provides that “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the tax 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.”

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

DISCUSSION

The Petitioner admits that she failed to timely file Utah income tax returns for the 2003 and 2004 tax years and to timely pay the amounts due for these years. Accordingly, the Division properly imposed failure to timely file penalties, failure to timely pay penalties, and interest, in accordance with Sections 59-10-539, Section 59-1-401, and Section 59-1-402.

However, subsequent to receiving the Statutory Notices, the Petitioner hired an accountant to prepare her returns and recently submitted the returns for the two years at issue. She also paid the amounts shown due on the returns, as follows:

<u>Year</u>	<u>Amount of Tax Remitted</u>
2003	\$\$\$\$\$
2004	\$\$\$\$\$

The amounts the Petitioner paid for the two years at issue were significantly more than the amounts assessed by the Division. The Division explains that the Petitioner included additional income, specifically alimony, on her tax returns that the Division could not have discovered at the time of assessment. The Division also proffers that because the amount of the delinquent tax for each year, as shown on the submitted returns, is greater than the tax originally assessed, as shown on the Statutory Notices, the penalties and interest will automatically be increased by the Tax Commission to reflect the actual delinquency.

The Petitioner explains that she wishes to pay her taxes, but asks the Commission to consider waiving the penalties and interest due to her circumstances. The Petitioner proffers that she and her husband separated in 2001 and that her divorce was quite prolonged. She further explains that her husband had always managed their taxes and always hired accountants to prepare and file their returns. The Petitioner also proffers that when her 2002 taxes were due in early 2003, she was able to prepare and timely file her return and pay her taxes.

However, by the time 2003 taxes were due in early 2004, the Petitioner explains that her life had changed so that she did not have the emotional energy to prepare and file tax returns, knowing that she did not have the money at that time to pay the taxes that were due. She proffers that prior to 2004, she had had to move and that her child had had a baby and both of them had moved in with her. In addition, the Petitioner was working and had begun to attend graduate school in an attempt to support herself and her family.

Upon receiving the assessments, however, the Petitioner decided to deal with the issue and she took money out of her retirement account to hire an accountant and pay the amounts due not only to the Tax Commission, but also to the federal government. She asks the Commission to consider her circumstances and, if possible, to waive the penalties and interest associated with the tax years at issue.

Interest. Although penalties and interest may both be waived upon a showing of reasonable cause, the criteria for which the Commission waives interest are different than the criteria for which it waives penalties. Interest is charged because the taxpayer has had the use of the tax dollars during a period when the state should have had that use. For this reason, interest is only waived if the imposition of interest arose from a Commission employee's error. The Petitioner does not deny that the interest arose due to her own actions. Accordingly, the Commission finds that no reasonable cause exists to waive the interest imposed for the two years at issue and denies the Petitioner's request for a waiver of interest.

Penalties. In Utah State Tax Commission Publication 17 (Waivers – Reasonable Cause), the Commission provides that a penalty may be waived upon a showing of “clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.”

In this case, the Petitioner had filed an income tax return for the 2002 tax year, but chose not to timely file returns for the years at issue, partly because she did not have the funds to pay the taxes. Nevertheless, the Commission recognizes that the Petitioner filed tax returns for 2003 and 2004 that showed greater tax liabilities than had been imposed in the Statutory Notices and that she paid the greater amounts of taxes due. As a result, the Petitioner may be assessed a larger amount of penalties than shown in the notices, in order that the penalties correspond to the higher reported amounts of delinquent tax. Because the Petitioner took steps that resulted in her paying more tax that had been assessed, the Commission finds it reasonable to “cap” her penalties for the two years at issue at \$\$\$\$\$, the amounts imposed in the Division’s Statutory Notices for the two years at issue. Accordingly, the Commission waives any penalties for the 2003 and 2004 tax years that would exceed the \$\$\$\$\$ in penalties that were imposed in the notices.

DECISION AND ORDER

Based upon the foregoing, the Commission waives any penalties for the 2003 and 2004 tax years that would exceed more than \$\$\$\$\$ for the two years combined. Otherwise, the Petitioner’s request to waive the \$\$\$\$\$ in penalties originally assessed and any interest associated with the 2003 and 2004 tax years is denied. 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

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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.

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

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