

06-1491
Income
Signed 07/10/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	06-1491
v.	)	Account No.	#####
)		
TAXPAYER SERVICES DIVISION OF	)	Tax Type:	Income
THE UTAH STATE TAX	)	Period:	2003
COMMISSION,	)	Judge:	R. Spencer Robinson
)		
Respondent.)		

Presiding:
R. Spencer Robinson, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER 1, *pro se*
 PETITIONER 2, *pro se*
For Respondent: RESPONDENT REPRESENTATIVE

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 February 6, 2006. At issue was Petitioner's request for a waiver of the penalty assessed by the Taxpayer Services Division.

Petitioners usually file joint returns. Petitioners were late in filing their 2003 state income tax return. PETITIONER 2 said she believed taxes were being filed and paid. Her husband, who suffers from severe depression, had not filed or paid.

Petitioners took their tax information to someone who prepared and filed their returns. The 2003 return was three years late.

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The tax owed for 2003 was \$\$\$\$\$. Respondent applied the withholding of \$\$\$\$\$ to the 2003 tax year. Petitioner had refunds for 2004 (\$\$\$\$\$) and 2005 (\$\$\$\$\$). Respondent applied them to the 2003 liability. This left a balance of \$\$\$\$\$ in tax. Petitioners made a payment of \$\$\$\$\$ in August of 2006, which paid the remaining balance of the tax due and the interest.

The remaining balance is \$\$\$\$\$. This is the ten percent failure to file (\$\$\$\$\$), and ten percent failure to pay (\$\$\$\$\$) on the \$\$\$\$\$ in tax that remained after the \$\$\$\$\$ in withholding was applied to the 2003 tax of \$\$\$\$\$.

Respondent initially denied the request for waiver of the penalty on the grounds that economic hardship does not establish reasonable cause. Respondent understood economic hardship to be the basis of Petitioners' request when it issued the denial.

Petitioners later provided a letter dated November 22, 2006, from WITNESS. WITNESS stated that PETITIONER 1 had numerous medical problems over the past four or five years. One of them was being bipolar, which created problems with depression, anxiety, and mania. WITNESS said it was his impression that PETITIONER 1's failure to file in 2003 was because of his medical problems. He said it would be appreciated if the penalties could be waived.

Respondent said Petitioners also had a penalty in 2000 for late filing and payment. Petitioner did not request a waiver in 2000.

RESPONDENT REPRESENTATIVE acknowledged that illness may establish reasonable cause supporting a waiver of penalty. See Publication 17, paragraph C. However, she was concerned about how late the returns were filed. Illness shortly before the time of filing, with no one else to prepare and file the return, establishes reasonable cause. In this case, it seems PETITIONER 2 could have prepared and filed the return, or taken the information to a tax preparer, as Petitioners later did.

APPLICABLE LAW

59-1-401. Offenses and penalties - Rulemaking authority - Statute of limitations - Commission authority to waive, reduce, or compromise penalty or interest.

(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.

(b) This Subsection (1) does not apply to amended returns.

(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;

.....

(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 letter from WITNESS, the Commission finds PETITIONER 1 was unable to file and pay in a timely manner. His condition warrants a partial waiver of the penalties.

The Commission waives fifty percent of the non-filing penalty, and fifty percent of the non-payment penalty. The balance due, less any interest that may have accrued, is \$\$\$\$\$. It is so ordered.

This decision does not limit either 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

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case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. A party disagreeing with this decision must request a Formal Hearing on its behalf to preserve its right to a Formal Hearing. Requests filed by an opposing party do not preserve the non-requesting party's right to a Formal Hearing. Requests for a Formal Hearing must include the appeal number, the opposing party's name and address, and shall be mailed to the address listed below:

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. Once this appeal is closed, by Petitioners' withdrawal of the appeal, or failure to request a formal hearing within thirty days, Petitioners may contact the Taxpayer Services Division to discuss an offer in compromise. This discussion may include requests to reduce the amount owed or to arrange a payment schedule.

DATED this _____ day of _____, 2007.

R. Spencer Robinson

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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

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