

06-1531
Penalty & Interest
Signed 06/07/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 06-1531
v.)	
)	Account No. #####
TAXPAYER SERVICES DIVISION,)	Tax Period: 2004 - 2005
UTAH STATE TAX COMMISSION,)	Tax Type: Penalty & Interest
)	
Respondent.)	Presiding: Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Waivers Unit, Taxpayer
Services Division
RESPONDENT REPRESENTATIVE 2, Waivers Unit, Taxpayer
Services Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on February 22, 2007. Petitioner is appealing penalties of \$\$\$\$ and interest of approximately \$\$\$\$ for the late filing and payment of income tax for the filing period of 2004 and penalties of \$\$\$\$ and interest of approximately \$\$\$\$ for the late filing and payment of income tax for the filing period of 2005.

APPLICABLE LAW

The Tax Commission is granted the authority to waive, reduce, or compromise

penalties and interest upon a showing of reasonable cause. Utah Code Ann. § 59-1-401(11).

DISCUSSION

The Petitioner explained that she filed for bankruptcy before the due date for the 2004 tax return. At that time, the filing was a Chapter 13 bankruptcy. Before the due date for the 2004 return, she called the Utah State Tax Commission to inquire what she should do with regard to her 2004 tax payment and return. She received instructions that she should not make payment because she was in bankruptcy and that even though the tax burden would likely not be discharged in bankruptcy, she should work out payments through the bankruptcy court. She did not make payment for the 2004 tax year at that time.

The following year, her 2005 tax return was due. She was still in bankruptcy, although by this time the case was a Chapter 7 filing. She again called the Utah State Tax Commission to find out what she should do with regard to her 2005 tax filing. As with the year before, she received instructions not to pay until her bankruptcy filing was complete.

The Division's respondent explained that technically, both the 2004 and 2005 tax liabilities were post-petition debt and thus could and should have been paid as disbursements in the ordinary course of the Petitioner's business dealings. However, this is a more sophisticated analysis. The Division's representative explained that it is not unlikely that the customer service representatives would have advised Petitioner not to make payments when in bankruptcy. Because of the combined effects of the automatic stay and preferential payments in bankruptcy, customer service agents often err on the side of caution and advise against payments when in bankruptcy. On that basis, the Division did not dispute that Commission personnel provided incorrect advice to the

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Petitioner which resulted in late payments for the 2004 and 2005 tax years.

The Division denied the Petitioner's waiver request largely for compliance history. The Petitioner paid her 2003 taxes in June 2004, and thus paid an extension penalty. The Division also noted that in 2006, it assessed a \$\$\$\$ legal fee as part of its efforts to collect the 2004 and 2005 penalties and interest. The Division indicated that these factors took this case out of the discretion granted to waive penalties or interest at the Division level.

Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs/pub-17.pdf>, explains the factors that the Commission will consider in reviewing waiver requests. This publication explains that incorrect advice from the Commission that results in an underpayment can form good cause to waive penalties. This is also one of the few circumstances that will support the waiving of interest.

Weighing these factors, the Commission will exercise its discretion to waive penalties and interest, including a \$\$\$\$ legal fee, associated with the 2004 and 2005 tax year.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the penalties, interest, and legal fee associated with the 2004 and 2005 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

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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.

Clinton Jensen
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 the Petitioner does not request a Formal Hearing within the thirty-days as discussed above, failure to pay the amount of deficiency that results from this order may result in an additional penalty.

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