

06-1581
Income / Penalty
Signed 0/13/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER ¹ ,)	
)	ORDER
Petitioner,)	
)	Appeal No. 06-1581
v.)	Account No. #####
)	
TAXPAYER SERVICES DIVISION OF)	Tax Type: Income / Penalty
THE UTAH STATE TAX)	Period: 2001
COMMISSION,)	Judge: R. Spencer Robinson
)	
Respondent.)	

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Personal Representative
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, 2007. Petitioner originally appealed penalties assessed during the 2000 through 2004 tax years. Respondent granted the request as to the 2000 tax year, but denied the requests for the 2001 through 2004 tax years. At the hearing, the parties stipulated to a dismissal of the appeals for 2002 through 2004. The only year in issue is the 2001 tax year.

Petitioner had timely filed and paid his taxes prior to sustaining a brain injury. Problems with filing and payment began with the 2000 tax year. Based on the Petitioner's record of timely filing and paying, the Respondent waived the penalty associated with the 2000 tax year.

PETITIONER REPRESENTATIVE presented evidence in support of the waiver request based on the Petitioner's mental problems. PETITIONER REPRESENTATIVE stated that following the brain injury, Petitioner had difficulty remembering what he needed to do, and how to do things. He would write notes to himself, but would not follow up. He told stories repeatedly. He apologized

¹ Petitioner is deceased. PETITIONER REPRESENTATIVE is his personal representative.

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for rude behavior that had not taken place. He didn't pay bills until he received disconnect notices. He had papers all over the house. Finally, Petitioner stopped sleeping in his bedroom because there were so many papers in it. On one occasion, Petitioner could not recall how to use a telephone book.

On DATE, Petitioner passed away. Following his death, family members found uncashed checks. They found checks in envelopes that had not been mailed. They found books wrapped as gifts that had never been delivered. The family was unaware that the decedent had failed to file and pay his taxes.

Two days after Petitioner's passing, IRS notices arrived at his residence. Family members began searching for documents that would allow the filing of returns. Documents were retrieved and returns were filed. The 2001 Utah return was filed on November 2, 2006. Payment was included. The payment exceeded the liability by \$\$\$\$\$. The penalty for the 2001 tax year \$\$\$\$\$.

No one, other than Petitioner, was in a position to file and pay his taxes. Family members were not aware of Petitioner's failure to file and pay his taxes. Petitioner's failure to file returns and pay his taxes were the result of his brain injury.

RESPONDENT REPRESENTATIVE acknowledged that mental problems may establish reasonable cause supporting a waiver of penalty. See Publication 17, paragraph C. She had no evidence to contradict the evidence regarding Petitioner's behavior following his brain injury. She said the Respondent was prepared to refund the overpayment of \$\$\$\$\$, but deferred to the Commission on the request to waive the penalty.

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;

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(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 evidence, the Commission finds the Petitioner's brain injury made him unable to file and pay in a timely manner. His condition warrants a waiver of the penalties for the 2001 tax year. 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 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.

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DATED this _____ day of _____, 2007.

R. Spencer Robinson

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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