

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioners, vs. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	ORDER Appeal No. 06-1633 Account No. ##### Tax Type: Income Tax / Penalty & Interest Tax Year: 2004 Judge: Robinson
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Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
 PETITIONER REPRESENTATIVE, Accountant
For Respondent: RESPONDENT REPRESENTATIVE, from the Taxpayer Services Division

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 March 20, 2007. Petitioners requested a waiver of penalty and interest assessed following late filing of their 2004 income tax return. Respondent denied Petitioners' request to waive the penalty and interest. From that decision, Petitioner appeals to the Commission.

DISCUSSION

PETITIONER 1 and PETITIONER 2 lived in Utah. On December 27, 2003, they moved to STATE. PETITIONER 1 did some consulting in Utah and had a Utah corporation. PETITIONER REPRESENTATIVE filed their individual tax returns and the Utah corporate returns.

Petitioners began a new business in STATE, an LLC. The business was created in late 2004. It began transacting business in July of 2005. A CPA firm in STATE handled that business for Petitioners.

PETITIONER REPRESENTATIVE told PETITIONER 1 he needed the LLC return done, and a K-1 from the LLC. PETITIONER REPRESENTATIVE also spoke to the accountant in STATE.

PETITIONER REPRESENTATIVE filed the Utah corporate return and had the individual return for the 2004 tax year ready, but for the K-1 from the STATE LLC.

PETITIONER REPRESENTATIVE discussed extending the filing of the 2004 individual Utah return with PETITIONER 1, and the need to make a prepayment to avoid penalties. He sent form TC-546 to PETITIONER 1. PETITIONER REPRESENTATIVE assumed PETITIONER 1 had taken care of this.

Upon learning the STATE LLC had no profit or loss in 2004, PETITIONER REPRESENTATIVE sent the individual return to PETITIONER 1. PETITIONER 1 then filed the return. Respondent received it on August 22, 2006, along with payment.

PETITIONER 1 said he believed the STATE accountants were handling things. They said everything was fine. They made a prepayment to STATE. They did not make one to Utah.

Respondent reviewed Petitioners' history. The return for the 2003 tax year was filed late, without a prepayment. An extension penalty was assessed. Petitioners made payment in July of 2004. This was the first error.

October 15, 2005 was the end of the extension period. Petitioners filed and made payment on August 22, 2006.

Of the reasons for waiver listed in Tax Commission Publication 17, reliance on a competent tax advisor is the only one that seems to have possible applicability here. It states,

Reliance on a competent tax advisor: You fail to file after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised you a return was not required.

You are required, and have an obligation, to file; reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. You must demonstrate that ordinary business care, prudence were exercised in determining whether to seek further advice.

PETITIONER REPRESENTATIVE discussed with PETITIONER 1 extending the filing of the 2004 individual Utah return, and the need to make a prepayment to avoid penalties. He sent form TC-546 to PETITIONER 1. There is no indication PETITIONER 1 pursued this further with either PETITIONER REPRESENTATIVE or the accountants in STATE. He knew of the need to complete form TC-546 and to make a prepayment. There is no evidence he provided form TC-546 to PETITIONER REPRESENTATIVE or the accounts in STATE. There is no evidence anyone advised PETITIONER 1 there was no need to file a return.

APPLICABLE LAW

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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(10).

DECISION AND ORDER

Based on the evidence presented, the Commission finds Petitioners have not established reasonable cause in support of their waiver request. The Commission sustains the penalty and interest

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.

R. Spencer Robinson
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

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