

07-0027
Income Tax
Signed 05/30/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	07-0027
v.)		
	)	Account No.	#####
AUDITING DIVISION OF THE	)	Tax Years:	1996-2000
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income Tax
)		
Respondent.	)	Judge:	Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 2
For Respondent: RESPONDENT REPRESENTATIVE, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on May 17, 2007. At the Hearing, Petitioner's representative indicated that they were not contesting the tax amount of the audit deficiencies for the years 1996 through 2000, but were asking only for waiver of the penalties. The penalties were 10% failure to file and 10% failure to pay penalties totaling \$\$\$\$\$. Petitioner has made a payment of \$\$\$\$\$ towards the tax and interest for the period at issue in this appeal.

APPLICABLE LAW

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. Utah Code Sec. 59-1-401(1).

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).

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Utah Code Sec. 59-1-401(2).

Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the 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. Utah Code Sec. 59-1-402 (5).

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. Utah Code Sec. 59-1-401(1).

Except as otherwise provided in this section, the amount of any tax imposed by this chapter shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed), and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. . . . (3) The tax may be assessed at any time if: (a) no return is filed . . . Utah Code Sec. 59-10-536(1) & (3).

DISCUSSION

Petitioner explained that they had been residents of Utah prior to the period at issue. However, after PETITIONER 1 had retired he began spending much of his time in CITY, STATE staying at a friend's residence. He obtained a post office box for his mail and opened an account at the BANK 1 branch in CITY, because he had the understanding that if he did this he would be considered a resident of STATE for tax purposes. The couple did maintain a Utah residence during this entire period, which PETITIONER 2 considered to be her primary residence.

PETITIONER 2 indicates that she had relied completely on PETITIONER 1 to prepare the tax filings and that he had prepared returns for her to sign based on the income she had received during the years at issue. She states she did not realize he was not including his own income and when she learned what he was

doing in 2001 she insisted that he make the change back to filing Utah returns. Respondent did not audit the years at issue until 2006. After all this time, and with PETITIONER 1 unable to assist her, PETITIONER 2 felt she could not produce for the hearing information sufficient to contest the audits regarding the underlying income tax deficiency. She did provide copies of some checks from the BANK 2 account.

PETITIONER 2 explained that PETITIONER 1 had gone through open-heart surgery in 1996, by 1998 he had been diagnosed with diabetes. He was diagnosed with dementia in 2006. She indicates though, that his mental condition had not been normal for a long time. PETITIONER 1 was hospitalized in March 2007 and is currently very weak and confused. She explained that she is a retired schoolteacher and that she had to borrow money on her home to pay the tax at issue.

Respondent's representative indicated that the 10% failure to file and 10% failure to pay penalties had been assessed pursuant to Utah Code Sec. 59-1-401. She indicated that penalties could be waived for first time error incidents. She stated that returns for 1993 through 1995 had been filed timely. In 1993 there had been an audit, which was paid after the thirty days allowed for payment, so a penalty had been added. Respondent's representative indicates that after the period at issue Petitioners had been filling and paying their returns on time.

In considering whether there is reasonable cause for waiver of the penalties, the Commission considers the account history, PETITIONER 1's illness, and the fact that it now PETITIONER 2 who is trying to clear up the matter. Additionally, matters of domicile can be confusing and PETITIONER 1 may have believed that he did not need to file returns during the period at issue. PETITIONER 2 was not necessarily conceding that he was not domiciled in STATE, she instead felt that she was unable to prove her case at this time. Based on all the circumstances that were explained the Commission finds cause for waiver of the penalties at issue.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of penalties in the amount of \$\$\$\$\$ relating to Petitioners' income tax for the years 1996 through 2000. 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 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.

Jane Phan
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: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

JKP/07-0027