

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioner,

vs.

TAXPAYER SERVICES DIVISION,
UTAH STATE TAX COMMISSION,

Respondent.

ORDER

Appeal No. 07-0089

Tax Type: Income Tax / Penalty & Interest

Account No. ##### and #####

Tax Years: 1999, 2004, 2005

Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE¹, COMPANY A

For Respondent: RESPONDENT REPRESENTATIVE, from the 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 April 10, 2007. This appeal arises from the Division's assessment of an extension penalty of \$\$\$\$ for the 1999 tax year; a ten percent failure to file penalty of \$\$\$\$ for the 2004 tax year; and an extension penalty of \$\$\$\$ and a failure to pay penalty of \$\$\$\$ for the 2005 tax year. Petitioner asks that the penalties be waived, along with interest charged on the penalties. Respondent stated it had not charged interest on the penalties. Thus, the issue is waiver of the penalties.

Petitioner PETITIONER 1 is an oral surgeon. Prior to 1999 he was "very faithful" in filing and paying his taxes.

He sees patients, for the most part, one time. A decline in new patients led to a huge income loss. He "got behind." He has since made an effort to stay current on new obligations and to pay on previous years.

¹ On May 4, 2007, the Commission received a facsimile transmission from COMPANY A regarding revocation of the Power of Attorney authorizing PETITIONER REPRESENTATIVE and (X) of COMPANY A to appear for the Petitioners. As it arrived after the initial hearing was held, it has no bearing on PETITIONER REPRESENTATIVE'S ability to represent Petitioners during the initial hearing.

In October of 2000, Petitioners paid the 1999 tax year in full. In December of 2006, Petitioners requested a waiver. Granting it would result in a refund of the penalty. Assuming there is a basis for granting the waiver, Respondent said the 1999 tax year was beyond the three year statute of limitations for a refund.

For the 2004 tax year, Petitioners made a prepayment of \$\$\$\$\$. However, the tax liability was \$\$\$\$\$. Petitioners' 2004 return posted on November 16, 2005. This was after the extension period had passed. Petitioners' request for waiver of the penalty of \$\$\$\$\$ is based on financial hardship.

Petitioners did not make a prepayment for the 2005 tax year. There were two penalties: the first one is an extension penalty in the amount of \$\$\$\$\$, and the second is a failure to pay penalty in the amount of \$\$\$\$\$.

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).

Refunds may not be made after three years following the due date of a return, plus any extension period of the time for filing. Utah Code Ann. §59-10-529 (7).

DISCUSSION

In this case, Petitioners have cited financial hardship as the basis for their requested waivers in 2004 and 2005. Financial hardship does not establish reasonable cause. In the case of the 1999 year, the request for a refund of the penalty is beyond the period in which refunds may be made.

Interest was assessed on the taxes due, not the penalties. There is no Commission error that caused the Petitioners to not pay the proper amount of tax within the proper time. There is no reasonable cause for waiving interest.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the penalties and interest associated with the 2004 and 2005 tax years. For the 1999 tax year, the Commission denies Petitioner's request for a refund because it is beyond the period of limitations. 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:

Appeal No. 07-0098

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

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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