

07-0158
Income Tax / Penalty
Signed 08/27/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioners,

vs.

TAXPAYER SERVICES DIVISION,
UTAH STATE TAX COMMISSION,

Respondent.

ORDER

Appeal No. 07-0158

Tax Type: Income Tax / Penalty

Account No. #####

Tax Year: 2005

Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
PETITIONER REPRESENTATIVE, CPA

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 a ten percent failure to file penalty of \$\$\$\$ and a ten percent failure to pay penalty of \$\$\$\$ for the 2005 tax year. Petitioners request waiver of the penalties.

Petitioners timely filed their federal and State income tax returns on October 16, 2006. Petitioners filed both returns electronically. Utah State Tax Commission Publication 59, Handbook for Electronic Filers of Utah Income Tax Returns, states, "All provisions in the federal program are in effect for the Utah program." It also states, "The date of the IRS acknowledgement will be considered the filing date for a Utah return filed electronically." IRS Publication 3452 states, "You receive an electronic acknowledgement once the return is accepted."

Appeal No. 07-0158

The IRS rejected Petitioners' federal return. Petitioners re-filed it. Petitioners cite IRS Publication 1345 (revised 11-2004), which states, "If the electronic portion of a return is transmitted on or shortly before the due date and is ultimately rejected, but the provider and the taxpayer comply with the requirements for timely resubmission of a corrected return, the return will be considered timely filed." Petitioners state they complied and that the IRS accepted their return on October 20, 2006. The IRS considered Petitioners' return to be timely filed.

Respondent states there is no allowance for rejected e-filed returns in the State system. There is nothing in the computer system giving a five-day grace period.

Respondent said it received Petitioners' return on October 21, 2006. The tax due was \$\$\$\$\$. Because Respondent considered Petitioners' return to be late, it assessed a ten percent penalty for failure to file of \$\$\$\$\$, and a ten percent penalty for failure to pay 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).

DISCUSSION

Respondent correctly states there is no allowance for rejected e-filed returns in the State system. This is reflected in the State's computer system. Petitioners argue that the federal program allowing their e-filed federal return to be considered timely is applicable to their State return.

Petitioners' reliance on the ability to re-file under the federal program, and be considered as having timely filed, is reasonable. Whether all aspects of the federal program are fully incorporated by reference, the taxpayers acted with due diligence.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that reasonable cause has been shown to justify a waiver of the penalties in this case. It is so ordered.

Appeal No. 07-0158

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

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.

Appeal No. 07-0158

RSR/07-0012.int