

07-0388
Property Tax/Centrally Assessed
Signed 06/12/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
v.)	Appeal No.	07-0388
)	Tax Type:	Property Tax/Centrally Assessed
PROPERTY TAX DIVISION)	Tax Year:	2007
OF THE UTAH STATE TAX)		
COMMISSION,)	Judge:	Phan
)		
Respondent.)		

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Analyst
RESPONDENT REPRESENTATIVE 2, Analyst

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on June 4, 2007. Petitioner is appealing the penalty assessed pursuant to Utah Code Sec. 59-2-207, for Petitioner's late filing of the 2007 property tax report.

APPLICABLE LAW

A person, or an officer or agent of that person, owning or operating property described in Subsection(1)(b) shall file with the commission, on a form prescribed by the commission, a sworn statement on or before March 1 of each year. (Utah Code Sec. 59-2-207(1)(a).)

Except as provided in Subsection (3)(c), the commission shall assess a person a penalty as provided in Subsection (3)(b), if the person, or an officer or agent to that person, fails to file: (i) the statement required under Subsection (1)(a) on or before the later of: (a) March 1; or (B) if the commission allows an

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extension under Subsection (1)(c) for filing the statement, the day after the last day of the extension period or (ii) any other information the commission determines to be necessary . . . (Utah Code Sec. 59-2-207(3)(a).)

The penalty described in Subsection (3)(a) is an amount equal to the greater of: (i) 10% of the person's estimated tax liability under this chapter for the current calendar year not to exceed \$50,000; or (ii) \$100. (Utah Code Sec. 59-2-207(3)(b).)

(i) Notwithstanding Subsections (3)(a) and (4), the commission may waive, reduce, or compromise a penalty imposed under this section if the commission finds there are reasonable grounds for the waiver, reduction or compromise. (ii) If the commission waives, reduces, or compromises a penalty under Subsections (3)(c)(i), the commission shall make a record of the grounds for waiving, reducing, or compromising the penalty. (Utah Code Sec. 59-2-207(3)(c).)

DISCUSSION

Petitioner's representative states that a new office manager was hired and that it was the duty of the office manager to file the report. In March 2007 it was discovered that the office manager was embezzling funds. The office manager was thereafter terminated and is currently being prosecuted by the Carbon County Attorney on 47 counts of theft and unlawful use of a financial transaction card and forgery. After termination of the office manager Petitioner had an intense audit conducted and discovered the 2007 Annual Return for Assessment. Petitioner immediately contacted Respondent and, when it was determined that it had not been filed, Petitioner quickly (within a few days) filed the return.

Respondent's representatives indicate that this was the first time a penalty had been assessed against Petitioner. Petitioner had been filing the report timely prior to the period at issue. Due to the compliance history of the Petitioner along with the fact that the delay was caused by a situation with an embezzling employee and that Petitioner expeditiously sought to rectify the situation and promptly filed after becoming aware, it was Respondent's recommendation that this penalty be waived.

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The Commission accepts Respondent's recommendation in this matter, and will waive the penalty considering the account history and the embezzlement. The Commission cautions Petitioner that the criterion for waiving a second penalty is more stringent.

DECISION AND ORDER

Based on the foregoing, the Commission waives the penalty assessed pursuant to Utah Code Sec. 59-2-207. It is so ordered.

This decision does not limit a party's right to a Formal Hearing or the right of an affected county to show cause pursuant to Section 59-2-1007 why the Commission should not adjust the values in accordance with this order. However, this Decision and Order will become the Final Decision and Order of the Commission unless an affected party 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 administrative appeal rights in this matter. In that event, the Property Tax Division is ordered to adjust its records in accordance with this order. The Property Tax Division is also ordered to calculate the final adjustments to the values apportioned to

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tax districts as a result of this order and to deliver that information to the affected counties on behalf of the Commission. The auditors of the affected counties are ordered to use the information so provided to adjust their tax roles in accordance with this order.

DATED this _____ day of _____, 2007.

Jane Phan
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