

07-0392
Income / Penalty & Interest
Signed 10/16/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	ORDER Appeal No. 07-0392 Account No. ##### Tax Type: Income / Penalty & Interest Tax Years: 1999, 2000 & 2003 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing, as described in Utah Code Ann. §59-1-502.5, on October 10, 2007.

The Petitioner is appealing Auditing Division's (the "Division") assessments of penalties and interest for the 1999, 2000, and 2003 tax years. On March 20, 2007, the Division issued Notices of Deficiency and Estimated Income Tax ("Statutory Notices") to the Petitioner, in which it imposed additional tax, penalties, and interest for the three years at issue because the Petitioner had not filed Utah returns for these years.

The Petitioner subsequently submitted copies of his Utah returns for these years to the Commission, which his accountant had prepared and which he had assumed his accountant had sent to the Commission. Along with the returns, the Petitioner submitted the tax due for each year, which amounted to \$\$\$\$\$ for 1999, \$\$\$\$\$ for 2000, and \$\$\$\$\$ for 2003.

The Petitioner, however, is asking the Commission to waive the penalties and interest. The 10% failure to timely file penalty and the 10% failure to timely pay penalty amounted to \$\$\$\$ for 1999, \$\$\$\$ for 2000, and \$\$\$\$ for 2003, for a total of \$\$\$\$ in penalties. Although the exact amount of the interest due was unknown, the Division proffered that the amount of interest exceeds the amount of penalties.

Because his accountant failed to submit his returns when they were completed and because the Petitioner submitted copies of the returns and paid the tax due upon receiving the Statutory Notices, the Petitioner asks the Commission to waive the penalties and interest associated with the assessments. The Division states that it would not oppose the waiver of penalties if the Commission found that the Petitioner's reliance upon his CPA was reasonable, but would oppose the waiver of interest.

APPLICABLE LAW

Utah Code Ann. §59-10-539(1) provides for the imposition of penalty and interest associated with delinquent individual income tax, pertinent parts as follow:

(1) In case of failure to file an income tax return and pay the tax required under this chapter on or before the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return a penalty as provided in Section 59-1-401. For the purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

....

(8) In addition to the penalties added by this section, there shall be added to the tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments.

UCA §59-1-401 provides for the imposition of penalties for failure to file returns and pay tax when due, as follows:

(1) (a) 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.

....

(2) 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);
- (c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency;
- (d) failure to pay any tax within 30 days after the date the commission's order constituting final agency action resulting from a timely filed petition for redetermination or request for agency action is issued or is considered to have been denied under Subsection 63-46b-13(3)(b); and
- (e) failure to pay any tax within 30 days after the date of a final judicial decision resulting from a timely filed petition for judicial review.

UCA §59-1-402(5) provides that “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the tax 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.”

UCA §59-1-401(11) provides that the Tax Commission is authorized to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause.

DISCUSSION

The Petitioner admits that he did not timely file Utah income tax returns or timely pay the amounts due for the three tax years at issue. Accordingly, the Division properly imposed failure to timely file penalties, failure to timely pay penalties, and interest, in accordance with Sections 59-10-539, Section 59-1-401, and Section 59-1-402.

The Petitioner proffers that his CPA prepared the Utah tax returns for the years at issue at the times when they were due and that he does not know why the CPA failed to file the returns. The Petitioner states that he is unable to contact the CPA as he no longer lives in Utah. The Petitioner also admits that he

does remember whether he wrote checks for the amounts due for each year as shown on the returns, and if he did, whether the checks were cashed.

The Division states that for years not under appeal in this case, the Petitioner timely filed and paid Utah income taxes for tax years 1997, 1998, 2001, 2002, and 2004, but either filed or paid late for tax years 1995, 1996, and 2005.

Interest. Although penalties and interest may both be waived upon a showing of reasonable cause, the criteria for which the Commission waives interest are different than the criteria for which it waives penalties. Interest is charged because the taxpayer has had the use of the tax dollars during a period when the state should have had that use. For this reason, interest is only waived if the imposition of interest arose from a Commission employee's error. The Petitioner does not claim that the interest arose due to Tax Commission error. Accordingly, the Commission finds that no reasonable cause exists to waive the interest imposed for the three years at issue and denies the Petitioner's request for a waiver of interest.

Penalties. In Utah State Tax Commission Publication 17 (Waivers – Reasonable Cause), the Commission provides that a penalty may be waived upon a showing of “reliance on competent tax advisor.” However, the Commission explains that “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, and diligence were exercised in determining whether to seek further advice.”

In this case, the Petitioner received copies of Utah returns from his CPA for the three tax years at issue, each of which showed that the Petitioner owed more than \$\$\$\$ for the specific tax year. The Commission does not consider it ordinary business care that the Petitioner would not have written checks to pay the amounts due or, if he did, that he did not investigate why the checks were not been cashed. Accordingly, the Commission finds that the CPA's failure to file the taxpayer's returns does not constitute

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reasonable cause to waive the penalties under the circumstances in this matter. Furthermore, the Commission does not believe that a partial waiver is reasonable when the Petitioner's compliance history is considered, given that the Petitioner filed his Utah income tax return late for two of the four years prior to the 1999 year that is at issue in this case. Accordingly, the Commission denies the Petitioner's request for a waiver of penalties.

DECISION AND ORDER

Based upon the foregoing, the Commission denies the Petitioner's request for a waiver of penalties and interest for the tax years at issue. 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.

Kerry R. Chapman
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: If a Formal Hearing is not requested as discussed above, failure to pay any balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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