

07-0397
Penalty & Interest
Signed 09/25/2007

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER 1 & PETITIONER 2, Petitioners, vs. TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION, Respondent.</p>	<p>ORDER</p> <p>Appeal No. 07-0397</p> <p>Account No. #####</p> <p>Tax Type: Penalty & Interest</p> <p>Tax year: 2005</p> <p>Judge: Jensen</p>
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioners: PETITIONER 1

For Respondent: RESPONDENT REPRESENTATIVE 1, from the Taxpayer Services Division
RESPONDENT REPRESENTATIVE 2, from the Taxpayer Services Division
RESPONDENT REPRESENTATIVE 3, 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 July 30, 2007. Petitioners are appealing penalties and interest for the late payment of personal income tax for tax year 2005.

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

The parties agree that Petitioners filed their 2005 tax return electronically on October 17, 2006 but did not forward payment at that time. Petitioners' representative indicates that Petitioners mailed a payment of \$\$\$\$ for the 2005 return on February 9, 2007. Petitioners produced a carbon copy of that check as proof that they had made the February 9, 2007 payment. On approximately February 16, 2007, Petitioners received a letter from the Division indicating that the account was going into collections. Petitioners called the Division and received advice that they should stop payment on that check and mail another. Petitioners issued a \$\$\$\$

replacement check on February 26, 2007, which the Division received and processed.

Petitioners also presented evidence that explained their payment for the 2005 tax year in February 2007 rather than by the April 17, 2006 deadline for 2005 taxes. All of 2005 and much of 2006 were consumed with a difficult divorce. The divorce included a breaking and entering and a loss of tax records needed to file the 2005 tax return. The divorce was also expensive, causing a financial drain that made payment of taxes difficult.

The Division's representative explained that even if the Division were to have given Petitioner credit for payment of taxes on the date of Petitioners' first check on February 9, 2007 rather than the second check on February 26, 2007, it would not make much of a difference in penalties and interest. About half of penalties in this matter were incurred by the date that Petitioners filed their 2005 return on October 17, 2006. These were extension penalties, because while Utah allows an automatic extension for filing, there is no such extension for payment. The rest of the penalties were assessed on or shortly after November 24, 2006. This was the due date on the Division's October 24, 2006 letter notifying Petitioners of their payment shortage and need to make payment. Because all of the penalties at issue were already in place as of February 9, 2007, the only savings to be realized by giving credit for a February 9, 2007 date rather than the February 26, 2007 date would be about three weeks' interest.

As for the effects of the divorce in 2005 and 2006, the Division noted that this appeared to have more of an effect on financial matters rather than preventing filing of taxes. The Division also considered Petitioners' filing history, which included late filing or payments for the 2002, 2003 and 2004 tax years.

Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs/pub-17.pdf>, explains the factors that the Commission will consider in reviewing waiver requests. Unobtainable tax records are listed among the reasons for waiving penalties. Financial hardship is not listed as a reason to waive penalties. Publication 17 also explains that the Commission will consider a taxpayer's compliance history when making a decision on a waiver. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, a taxpayer needs to show Tax Commission error.

Applying the principles of Publication 17, Petitioners have provided evidence of a theft of records that may have contributed to a difficulty estimating 2005 tax liabilities by the April 17, 2006 deadline. However, Petitioners did not make payment for 2005 taxes until February 2007, even though Petitioners knew their 2005 tax liability on October 17, 2006. This late payment and Petitioner's compliance history indicating late filing or payments for 2002, 2003, and 2004 rule out a waiver of penalties for the 2005 tax year. With regard to

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interest, the best case Petitioners could make would be for waiver of interest from February 9, 2007 to February 26, 2007 if they were able to show that someone at the Commission mishandled their February 9, 2007 payment. But from the evidence presented at hearing, it just as likely that the taxpayer or the postal service made the error in the February 9, 2007 payment.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the penalties or interest associated with the 2005 tax year. 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.

Clinton Jensen
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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