

07-0441
Income Tax / Penalty & Interest
Signed 09/10/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION, Respondent.	ORDER Appeal No. 07-0441 Tax Type: Income Tax / Penalty & Interest Account No. ##### Tax Year: 2000, 2001 Judge: Robinson
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Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *pro se*, present at the hearing

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 June 14, 2007. This appeal arises from the Division's decision on Petitioner's waiver request for 2000 and 2001. The Division waived penalty for 2000, but not interest. The Division declined to waive penalty and interest on 2001.

The Division sent notice of its decision to Petitioner on March 23, 2007. Petitioner filed a Petition for Redetermination on April 12, 2007 for the years 2000 and 2001. He asks that the penalty for 2001 be waived, along with interest for both years.

Petitioner's mother came down with Alzheimer's in 1993. He lived with and cared for her until 2000, when he had back surgery. In 2000 he was recovering from surgery. He states he had no income. He said he lost his tax records when he moved out of the home he shared with his mother.

Petitioner retired in 2003. His income is \$\$\$\$\$ per month. He has recreated his tax information to the best of his ability. He believes he owes \$\$\$\$\$ for 2001. Because of his income, he said paying anything would be an extreme hardship.

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Petitioner said the State owed him a refund of \$\$\$\$ for 2002 that he had not received. The Division said that year was beyond the period of limitations for refunds, thus prohibiting it from making the refund or crediting Petitioner's account. The Commission notes the 2002 tax year is not part of this appeal.

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

In this case, Petitioner has cited unavailability of records as the basis for his requested waiver. As noted in Publication 17, Waivers – Reasonable Cause, this may establish reasonable cause. The Division waived the penalty for the 2000 tax year. It did so based on it being Petitioner's first error, not unavailability of records.

With respect to the 2001 tax year Petitioner has not paid the \$\$\$\$ due. Publication 17 states that payment of the tax is required before a waiver request may be considered. Because Petitioner has not paid the tax, the Division declined to consider Petitioner's request to waive the 2001 penalty.

Interest is generally not waived unless there is Commission error. There is no Commission error that caused the Petitioner 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 Commission sustains the penalty and interest. 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.

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The Commission notes that, while this appeal is pending, the Offer in Compromise Unit in Taxpayer Services may not review a request from Petitioner for reduction in the amount he will be expected to pay, or to negotiate a payment schedule. Once the appeal is closed, whether by withdrawal of the appeal or conclusion of the appeals process, Petitioner may contact the Offer in Compromise Unit in an effort to negotiate more favorable terms.

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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