

07-0522
Income Tax Penalty & Interest
Signed 09/17/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioner,

vs.

TAXPAYER SERVICES DIVISION,
UTAH STATE TAX COMMISSION,

Respondent.

ORDER

Appeal No. 07-0522

Tax Type: Income Tax
Penalty & Interest

Account No. #####

Periods: 2005

Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1, *pro se*, via telephone

For Respondent: RESPONDENT REPRESENTATIVE, Compliance Agent, Taxpayer
Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on July 30, 2007. Respondent denied Petitioner's request to waive the penalty and interest. From that decision, Petitioner appeals to the Commission.

DISCUSSION

Petitioner PETITIONER 1 is employed overseas in the construction industry. As a result, his employers do not deduct withholding tax from his pay. He must compute his taxes and submit payment when he files. COMPANY A prepares his returns.

Petitioners filed and paid their 2004 return in July of 2006. Respondent assessed a penalty. Petitioners filed and paid their 2005 return in November of 2006.

Respondent assessed a 10% failure to pay penalty for 2005. The penalty was \$\$\$\$\$. Respondent also assessed a 10% failure to file penalty.

When Petitioners filed their 2005 return, they also submitted a payment of \$\$\$\$\$. Taxes due were \$\$\$\$\$. The late filing and payment penalties were \$\$\$\$\$ each. Respondent also assessed interest.

Appeal No. 07-0534

Petitioners' payment was insufficient to cover the total due. As of April 13, 2007, the total remaining balance was \$\$\$\$\$.

Petitioners requested a waiver for the 2005 tax year. Respondent declined the waiver request based on Petitioners' history. Petitioners were also late in 2004.

Of the reasons for waiver listed in Tax Commission Publication 17, reliance on a competent tax advisor is potentially applicable here. It states,

Reliance on a competent tax advisor: You fail to file after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised you a return was not required.

You are required, and have an obligation, to file; 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.

Petitioners relied on COMPANY A in filing and preparing their returns. There was never a question of whether Petitioners were required to file a return. Petitioners produced no evidence that they were advised they could file when they did without incurring penalties, or without interest accruing.

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(10).

DECISION AND ORDER

Based on the evidence presented, the Commission finds Petitioners have not established reasonable cause. The Commission sustains the assessment of penalties and interest.

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

Appeal No. 07-0534

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

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