

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

TAXPAYER SERVICES DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

ORDER

Appeal No. 07-0613

Account No. #####

Tax Type: Income Tax

Tax Year: 2003, 2004, 2005

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Tax Compliance Agent

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5 on August 13, 2007. Petitioner is appealing late payment and late filing penalties issued relating to his Utah individual income tax filings for the years 2003, 2004 and 2005. Petitioner was not requesting waiver of interest. The penalties were 10% failure to file and 10% failure to pay penalties for each year at issue. They totaled \$\$\$\$ for 2003, \$\$\$\$ for 2004 and \$\$\$\$ for 2005.

APPLICABLE LAW

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. (b) This Subsection (1) does not apply to amended returns. Utah Code Sec. 59-1-401(1).

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

Appeal No. 07-0613

due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a). Utah Code Sec. 59-1-401(2).

Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the 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. Utah Code Sec. 59-1-402 (5).

Upon making a record of its actions, and upon reasonable cause shown the commission may waive, reduce or compromise any of the penalties or interest imposed under this part. Utah Code Sec. 59-1-401(11).

DISCUSSION

Petitioner has now paid the tax, penalty and interest for 2005 and indicated he would waive his request for waiver of that penalty if Respondent would waive the penalties for 2003 and 2004. Respondent's representative indicated that Respondent had waived the penalty for 2001 as a first time error, but it was Respondent's conclusion at the time of the hearing that 2003 and 2004 could be waived as well, on the basis of the Fresh Start Program. Waiver for 2005 did not fit within that recommendation, however, Petitioner was in agreement with the recommendation and paying the 2005 penalty.

Interest is assessed when taxes are not paid or underpaid to compensate the state for the time value of money. Interest is generally waived only in the event the Tax Commission, or Tax Commission employee error gave rise to the late payment or underpayment. There was no showing of this type of error in this matter and Petitioner understood that he would have to pay the interest.

DECISION AND ORDER

Based upon the foregoing, the Commission waives the penalties for 2003 and 2004. The

Appeal No. 07-0613

Commission sustains the interest for both periods and sustains both penalties and interest for 2005. Respondent is to adjust the balance due accordingly. 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.

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.

Appeal No. 07-0613

DATED this _____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

JKP/07-0613.int