

07-0627
Income Tax/Penalty & Interests
Signed 08/20/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioner,

v.

TAXPAYER SERVICES DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

ORDER

Appeal No. 07-0627

Account No. #####

Tax Type: Income Tax/Penalty & Interest

Tax Year: 2005

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1

For Respondent: RESPONDENT REPRESENTATIVE, Waiver Unit, 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 an extension penalty and interest assessed with his 2005 Utah individual income tax filing. The penalties at issue totaled \$\$\$\$\$. Interest was assessed and continued to accrue until the balance was paid.

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

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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 asked that the penalties or interest be waived. He explained that there were several circumstances that led to the late filing and payment. There had been a death in the family that required Petitioner to travel out of the country, and some illness with family members. However, the main issue was that the Utah tax liability for 2005 was higher than it had been for any prior year. Petitioners owed tax to Utah for 2005 in the amount of \$\$\$\$\$. Petitioner had only \$\$\$\$\$ of withholding for that year. When the tax amount was calculated during the extension period, Petitioner filed the return and entered into a monthly payment agreement to pay \$\$\$\$\$ per month until the balance was paid, which would have taken two years. Petitioner indicates that while making payments, he talked to a Tax Commission employee and Petitioner states the employee told him if he paid the balance more quickly than indicated in the payment plan, there would be good chance of waiver of penalties or interest. Based on this Petitioner borrowed money and paid the remaining amount owed by March of 2007.

Petitioner did not understand he was required to make a prepayment by April 15. He states his 2005 return was prepared by an accountant and the accountant had not told him about the prepayment

requirement. Additionally he indicated if he had been assessed a prepayment penalty in a prior year he was unaware what it was for, and just paid the penalty.

Respondent's representative pointed out that there had been an extension penalty of \$\$\$\$\$, because Petitioner had not made a prepayment of 100% of the prior years tax or at least 90% of the 2005 tax by April 15, 2006. She stated, however, that the prior years tax had been only \$\$\$\$\$ and the subject year was the largest tax liability that Petitioner had incurred on his account history. There had been \$\$\$\$\$ of withholding, so if Petitioner had made a prepayment of only \$\$\$\$\$ by April 15, 2006, the prepayment penalty would not have been assessed. It was Respondent's contention that the prepayment penalty of \$\$\$\$\$ was excessive in relation to the tax amount that Petitioner could have paid to avoid the penalty. The penalty had not initially been waived because there had also been a much smaller prepayment penalty in 2002. Respondent's representative asked that the Commission consider the amount of the penalty in relation to the tax prepayment that should have been made.

Interest accrues from the time the tax was due, which in this case was April 15, 2006, until the balance is paid. Interest is assessed when taxes are not paid or are 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 basis for waiver of interest.

DECISION AND ORDER

The Commission would note from what Petitioner reported of his conversation with a Tax Commission employee regarding early payment and waiver, there may have been a misunderstanding. However, Petitioners could not have requested waiver of the penalties until they had paid an amount equal to the tax portion. Once that occurred the Commission would apply the reasonable cause criteria to determine waiver. Inability to pay is not basis for waiver of the penalty in the administrative appeal process. However, in

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this case the penalty is excessive compared to the tax amount of \$\$\$\$\$ that Petitioner should have paid on April 15 to avoid the penalty. For this reason, and considering there had been only the one prior error, the Commission finds that sufficient cause has been shown to justify a waiver of the penalties associated with Petitioner's individual income tax for tax year 2005. No cause has been shown for waiver of the 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.

DATED this _____ day of _____, 2007.

Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

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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: 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.

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