

07-0958
Income Tax
Signed 10/16/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

AUDITING DIVISION OF THE UTAH STATE
TAX COMMISSION,

Respondent.

ORDER

Appeal No. 07-0958

Account No. #####

Tax Type: Income Tax

Tax Years: 1999, 2003

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Manager, Income Tax Auditing

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 October 4, 2007. The matter had originally been scheduled for a Telephone Status Conference, but was converted to the hearing as Petitioner did not contest the underlying tax amount. Petitioner is appealing penalties issued with an income tax audit for tax year 1999. The penalties totaled \$\$\$\$ and were 10% failure to file and 10% failure to pay penalties. (See Utah Code Sec. 59-1-401). No penalties were assessed with the 2003 audit. Petitioner has paid the tax amount for the 2003 assessment. Interest is to accrue on the unpaid balance.

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 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).

Except as otherwise provided in this section, the amount of any tax imposed by this chapter shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed), and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period . . . (3) The tax may be assessed at any time if: (a) no return is filed . . . Utah Code Sec. 59-10-536(1) & (3).

DISCUSSION

Petitioner explained that she had thought that she filed her 1999 Utah return. She had severe medical problems during that year, including breaking her leg, knee replacement surgery and then additional hospitalization for a life threatening condition. However, she did not realize the return had not been filed until she received information on the audit.

Respondent's representative indicated that from the information he had obtained, he did not see a prior error on Petitioner's account. Therefore there does appear to be good compliance history on the part of Petitioner.

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 a Tax Commission employee error gave rise to the late payment or underpayment.

DECISION AND ORDER

Based upon the foregoing, 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 1999. The audit as it pertains to the tax amount and interest for both 1999 and 2003 is hereby sustained. 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

Appeal No. 07-0958

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: 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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