

07-1593  
Penalty and Interest  
Signed 05/28/2008

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,

Petitioner,

v.

TAXPAYER SERVICES DIVISION OF THE  
UTAH STATE TAX COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 07-1593

Account No. #####

Tax Type: Income Tax

Tax Year: 2006

Judge: Marshall

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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1, Esq.

For Respondent: RESPONDENT REPRESENTATIVE, Manager, Waiver Unit,  
Taxpayer Services

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing, pursuant to the provisions of Utah Code Ann. §59-1-502.5 on May 13, 2008. The Taxpayer has requested a waiver of the penalties assessed for the 2006 tax year. An extension penalty in the amount of \$\$\$\$ and a late payment penalty in the amount of \$\$\$\$ were assessed. Interest was also assessed. The Taxpayer has paid all assessed amounts, and the Taxpayer Services Division has granted a waiver of the late pay penalty.

APPLICABLE LAW

Section 59-1-401(2) of the Utah Code imposes a penalty for failure to pay as follows:

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...

Utah Code Ann. §59-1-401(2) (2006).

An extension penalty is imposed under Utah Code Ann. §59-1-401(4), as follows in pertinent part:

- (a) In case of an extension of time to file an individual income tax or corporate franchise tax return, if the lesser of 90% of the total tax reported on the tax return or 100% of the prior year's return is not paid by the due date of the return, not including extensions, a 2% per month penalty shall apply on the unpaid tax during the period of extension.

Utah Code Ann. §59-1-401(4) (2006).

Section 59-1-402(5) of the Utah Code provides, "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 Ann. §59-1-402(5) (2006).

The Commission has been granted discretion in waiving penalties and interest. Section 59-1-401(11) of the Utah Code provides, "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 Ann. §59-1-401(11) (2006).

The Commission has issued Publication 17, available at <http://tax.utah.gov/forms/pubs>, to set forth the factors the Commission may consider in determining whether reasonable cause exists for the waiver of penalties or interest. Publication 17 also indicates the Commission will consider a taxpayer's filing history when making a decision on a request to waive penalties.

#### DISCUSSION

The Taxpayer is requesting a waiver of the penalties assessed for the 2006 tax year. The Taxpayer explained that in 2006, he did file an extension, but that he paid the tax due. He took exception to the letter received from the Taxpayer Services Division regarding his waiver request because it stated that he has shown "a lack of reasonable care in handling your tax filing and payment responsibilities." The Taxpayer explained that he has filed an extension for several years, because he has had to wait for a K-1 that was usually received late. He stated that the K-1 will no longer be a problem, and that his accountant will be working on the pre-payments.

The representative for the Division stated that the Taxpayer's compliance history showed two extension penalties for the three years preceding the 2006 tax year. The Taxpayer was assessed an extension penalty for the 2003 tax year, which was waived; for the 2004 tax year, the Taxpayer filed an extension, but had made a sufficient pre-payment; and for the 2005 tax year, the Taxpayer was assessed an extension penalty, which was not waived. The Division granted

the waiver request for the late payment for the 2006 tax year as a first-time error; however the waiver request for the extension penalty was denied because of Taxpayer's compliance history. Taxpayer's representative explained the payment rule for extension filers, so that Taxpayer is now aware that either 100% of the tax liability for the year prior or 90% of the tax liability for the current year must be timely paid.

Applying the principals of Publication 17, the Commission notes that the Taxpayer had errors in their tax filings for the 2003 and 2005 tax years with the extension penalty, and thus does not have a clean compliance history. Upon review of the information provided by the parties, the Commission concludes that reasonable cause has not been shown for a waiver of the extension penalty pursuant to Utah Code Ann. §59-1-401(11) (2006).

DECISION AND ORDER

Based on the foregoing, the Commission upholds the Division's waiver of the late payment penalty in the amount of \$\$\$\$\$, but finds that sufficient cause has not been shown to justify a waiver of the extension penalty in the amount of \$\$\$\$\$ associated with Petitioner's Income Tax Filing for the 2006 tax year. 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 \_\_\_\_\_, 2008.

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Jan Marshall  
Administrative Law Judge

Appeal No. 07-1593

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 \_\_\_\_\_, 2008.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

*JM/07-1593*