

08-0013
Penalty and Interest
Signed 05/28/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 08-0013 Account No. ##### Tax Type: Income Tax Tax Year: 1999 and 2000 Judge: Marshall
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, *Pro Se*
 PETITIONER, *Pro se*
For Respondent: RESPONDENT REPRESENTATIVE 1, Manager, Waiver Unit,
 Taxpayer Services
 RESPONDENT REPRESENTATIVE 2, 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 7, 2008. The Petitioner has requested a waiver of the penalties assessed for the late payment of tax amounts for the 1999 and 2000 tax years. The penalty for the 1999 tax year was \$\$\$\$\$, and the penalty for the 2000 tax year was \$\$\$\$\$. Interest was assessed.

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) (1999-2000).

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) (1999-2000).

The Commission has been granted discretion in waiving penalties and interest. Section 59-1-401(10) 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(10) (1999-2000).

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 Taxpayers are requesting a waiver of the penalties imposed for the late payment of tax for the 1999 and 2000 tax years. In 1999 the Taxpayers purchased an LOI (Loss of Income) policy. For the 1999 and 2000 tax years, the Taxpayers properly took an itemized deduction for the LOI policy on their federal returns. The IRS subsequently disallowed the deduction for LOI policies, and in 2004 the Taxpayers were audited by the IRS for the 1998-2001 tax years.

The Taxpayers’ IRS audit continued until 2007, and when the IRS finally made a determination, the Taxpayers filed amended returns with the state. The Taxpayers’ original returns for the 1999 and 2000 tax years were timely filed and timely paid. The amended returns resulted in an increased tax liability, and penalties were assessed for the resulting tax deficiency. The Taxpayers worked with individuals named (X) and (X) at the Tax Commission, and presented a letter from (X) that stated the Taxpayers should request a waiver of the penalties.

The Taxpayers submitted a waiver request to the Tax Commission, and on December 12, 2007 received a letter indicating that their request for a waiver of the interest had been denied, but did not address the taxpayers’ request for a waiver of the penalties. For the Taxpayer Services Division, RESPONDENT REPRESENTATIVE 1 stated that she believes the penalties should be waived for the 1999 tax year. Further, she believes there is an argument to be made for a waiver of the penalties for the 2000 tax year as well, since it is the same issue for both years. Finally, RESPONDENT REPRESENTATIVE 1 stated that with the exception of the 1999 and 2000 tax years, the Taxpayers have a clean compliance history.

Upon review of the information provided by the parties, including the fact that the deduction taken by the Taxpayers was legally allowed at the time they filed their original returns and was subsequently reversed by the IRS, and the Taxpayer Services Division's position that the penalties should be waived for the 1999 tax year and arguably for the 2000 tax year, the Commission finds that reasonable cause does exist for the waiver of penalties. Typically, the Commission would only waive the penalties for one period as a first time error. However, the Commission finds that equitable considerations, including the facts that the penalties arose from the same deduction properly taken on the original returns and the Taxpayer's caught and corrected their own error, there is reasonable cause to waive the penalties for the 1999 and 2000 tax years.

DECISION AND ORDER

Based on the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the penalties associated with Petitioner's Income Tax Filing for the 1999 and 2000 tax years. 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.

Jan Marshall
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 _____, 2008.

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.

JM/08-0013.int