

09-1203  
PENALTY AND INTEREST  
SIGNED 03-04-2010

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER 1 &amp; PETITIONER 2,  Petitioners,  vs.  TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 09-1203</p> <p>Account No. ##### Tax Type: Penalty &amp; Interest Income Tax Tax Period: 2007</p> <p>Judge: Phan</p>
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**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1  
PETITIONER REP., Taxpayers' Representative  
For Respondent: RESPONDENT REP. 1, Tax Compliance Agent  
RESPONDENT REP. 2, Tax Compliance Agent

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on pursuant to Utah Code Sec. 63-46b-6 et al., on November 24, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the "Taxpayer") is appealing an extension penalty and late payment penalties assessed pursuant to Utah Code Sec. 59-1-401 for the tax year 2007. These penalties had been assessed pursuant to Utah Code Sec. 59-1-401(3) & (5). Interest was also assessed on the unpaid balance pursuant to Utah Code Sec. 59-1-402. Interest accrues from the date that the tax was due until the balance has been paid.
2. The amount of the extension penalty was \$\$\$\$\$. The late payment penalties totaled \$\$\$\$\$.
3. The Taxpayer explained that the 2007 tax year was an unusual year regarding his tax liability.

He testified that for the years 2002 through 2008, with the exception of the 2007 year, his Utah tax obligation had been \$\$\$\$\$ or less, with most of these years less than \$\$\$\$\$. For the subject year, his tax liability had been \$\$\$\$\$. He explained the reason for this difference was that in 2007 they had incorporated two sole proprietorships. Secondly, he had entered into a contract that he had thought was a sale of a building owned by a partnership. He thought that he could reinvest the proceeds in a like property so that it would be a 1031 exchange. He did not receive the K-1 from the partnership by April 15. He testified that he did not, in fact, receive the K-1 until two weeks before the extension deadline. It was not until he received the K-1 that he realized the transaction had been structured so that he had sold his partnership interest and not the real estate. Based on this structure he had realized significant income on the transaction that was taxable. It was his testimony that he was not aware of the tax implications until it was too late to make a prepayment.

4. Additionally, the Taxpayer testified that he was unaware that he could have paid 100% of the prior year's liability as a prepayment and thereby avoid the extension penalty. He testified that he was unaware of this even though an extension penalty of \$\$\$\$\$ had been assessed against him for the 2006 tax year. The Taxpayer testified that he did not understand he had been assessed a penalty in 2006. The account history provided by the Division showed that the 2006 penalty had been paid by a "Credit transferred in from 05."

5. At the hearing it was discussed that the Taxpayer could have made a prepayment equaling his 2006 state liability to avoid the extension penalty for 2007. The prior year's (2006) tax liability had only been \$\$\$\$\$. For the 2007 year he had state withholding of \$\$\$\$\$, but he had made no additional prepayment by April 15, 2008. If he had paid only \$\$\$\$\$ more by April 15, there would have been no extension penalty.

6. The representatives for the Division explained that the Division had not waived the penalties because of compliance history. The Taxpayer had been assessed an extension penalty in 2006. Because the liability for that year had been so much lower the penalty had only been \$\$\$\$\$. The Division pointed out that there had also been a late payment in the 2004-year. However, for that year the penalty had only been \$\$\$\$\$.

7. The Division argued that, considering the prior errors, there had not been a showing of unobtainable records or any other factor that would provide cause for waiver of the penalties. The Division pointed out that the extension penalty is assessed for failure to make the required prepayment. If taxpayers are unsure how much their tax liability will be for the year because they have not yet received their financial statements, they have the option of paying 100% of their prior year's liability as a prepayment. The Division's representatives acknowledged that the Taxpayer has now paid all amounts owed.

#### APPLICABLE LAW

The penalty for failure to pay tax due is the greater of \$20 or up to 10% of the unpaid tax for due.

Utah Code Sec. 59-1-401(3).

A penalty for failure to make the required prepayment is assessed at a rate of 2% of the tax due per month. Utah Code Sec. 59-1-401(5)(b).

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(13).

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.

...

(l) Compliance History: (i) The Commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived. (ii) The Commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. . .

#### CONCLUSIONS OF LAW

1. The Commission has the authority to waive or reduce penalties if there is a showing of reasonable cause pursuant to Utah Code Sec. 59-1-401(13). Utah Administrative Rule R861-1A-42 lists the events or actions that constitute reasonable cause for purpose of the statute. There is a provision for waiver due to unobtainable records. While the Commission would not base a waiver or reduction solely on this criteria, due to the primary issue being a failure to make a prepayment, the Commission does give this some consideration because the Taxpayer was expecting to owe so much less in tax at the time he should have made the prepayment, compared to what he ended up owing. However, the Taxpayer always had the option of paying the prior year's tax liability as a prepayment.

2. The Commission also concludes that the penalty may not be waived or reduced strictly on the

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compliance history, because of the two prior errors. Along with this compliance history, the Commission considers whether there is cause for reduction of the penalty based on equitable considerations. Had the Taxpayer paid \$\$\$\$ on April 15, 2008, he would have made the proper prepayment and avoided the \$\$\$\$ extension penalty. For the 2006 year the extension penalty was only \$\$\$\$ and the Taxpayer just paid the amount instead of determining why it had been assessed and how to properly make a prepayment. Although the Taxpayer had been assessed the prior penalty, it is feasible that he did not realize it had been assessed and the amount was insignificant compared to the current penalty. Because the amount of the tax that needed to be paid to make the proper prepayment was so much smaller than the penalty that ensued, there is cause under equitable considerations to reduce the penalties. There is no basis for waiver of the late payment penalties totaling \$\$\$\$\$, but the extension penalty should be reduced from \$\$\$\$ to \$\$\$\$ so that the total amount of the penalties is \$\$\$\$.

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Jane Phan, Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the late payment penalties totaling \$\$\$\$ and reduces the extension penalty to \$\$\$\$ for the 2007 tax year. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

**Notice and Appeal Rights: Failure to pay the balance due as a result of this decision within thirty (3) days from the date hereon could result in additional penalties.** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code §63G-4-301 and Utah Admin. Rule R861-1A-29. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code §§59-1-601 et seq. and 63G-4-401 et seq.

*JKP/09-1203.fof*