
BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 09-1224 Account No. ##### Tax Type: Income Tax Year: 2003 & 2005 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1, Taxpayer
For Respondent: RESPONDENT, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on January 6, 2010.

On February 26, 2009, Auditing Division (the "Division") issued Notices of Deficiency and Estimated Income Tax ("Statutory Notices") to PETITIONER 1 & PETITIONER 2 ("Petitioners" or "taxpayers"), in which it imposed additional individual income tax for the 2003 and 2005 tax years. For each tax year, the Division imposed additional tax, a 10% penalty for failure to timely file a tax return, a 10% penalty for failure to timely pay tax due, and interest (calculated through March 28, 2009), as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2003	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2005	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
				<u>\$\$\$\$\$</u>

The Division issued its assessments because the Tax Commission had not received Utah income tax returns from the taxpayers for either the 2003 or 2005 tax year. The taxpayers have since submitted tax returns for these years, which the Division has accepted. Based on these returns, the amount of additional tax due for the 2003 tax year is \$\$\$\$\$ and for the 2005 tax year is \$\$\$\$\$. The Division has also revised the penalties and interest it had assessed to reflect these new tax amounts.

The taxpayers do not dispute that they owe additional tax in the amount of \$\$\$\$\$ for 2003 and \$\$\$\$\$ for 2005. However, they ask the Commission to waive the penalties and interest that have been assessed. The taxpayers state that they timely filed their 2003 and 2005 returns. The taxpayers claim that they timely mailed their 2003 return to the Tax Commission and that they timely filed their 2005 tax return on-line. The taxpayers also claim that they mailed a check for the \$\$\$\$\$ shown due on their 2003 return at the same time they mailed the 2003 return. However, the taxpayers did not timely mail a check for the \$\$\$\$\$ shown due on their 2005 return. The taxpayers admit that they found a check they wrote in 2006 in their 2005 tax information once they received the Division's assessments and reviewed their records.

APPLICABLE LAW

Utah Code Ann. §59-10-516 allows an extension for filing a Utah income tax return, as follows in pertinent part:

- (1) (a) The commission shall allow a taxpayer an extension of time for filing returns.
 - (b) The extension under Subsection (1)(a) may not exceed six months.
- (2) (a) Except as provided in Subsection (2)(b), the commission may not impose on a taxpayer during the extension period prescribed under Subsection (1) a penalty under Section 59-1-401 if the taxpayer pays, on or before the 15th day of the fourth month following the close of the taxpayer's taxable year, the lesser of:
 - (i) 90% of the total tax reported on the return for the current taxable year; or
 - (ii) 100% of the total tax liability for the taxable year immediately preceding the current taxable year.
- (b) If a taxpayer fails to meet the requirements of Subsection (2)(a), the commission may apply to the total balance due a penalty as provided in Section 59-1-401.

....

UCA §59-1-401 provides for the imposition of penalties and the waiver of penalties and interest, as follows in pertinent part:

.....
(5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a person allowed by law an extension of time for filing a corporate franchise or income tax return under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not including the extension of time, the person fails to pay:

.....
(ii) for a person filing an individual income tax return under Chapter 10, Individual Income Tax Act, the payment required by Subsection 59-10-516(2).

(b) For purposes of Subsection (5)(a), the penalty per month during the period of the extension of time for filing the return is an amount equal to 2% of the tax due on the return, unpaid as of the day on which the return is due as provided by law.

(6) If a person does not file a return within an extension of time allowed by Section 59-7-505 or 59-10-516, the person:

(a) is not subject to a penalty in the amount described in Subsection (5)(b); and

(b) is subject to a penalty in an amount equal to the sum of:

(i) a late file penalty in an amount equal to the greater of:

(A) \$20; or

(B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is due as provided by law, not including the extension of time; and

(ii) a late pay penalty in an amount equal to the greater of:

(A) \$20; or

(B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is due as provided by law, not including the extension of time.

.....
(13) 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.

UCA §59-1-402(5) provides that “[i]nterest 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 Admin. Rule R865-1A-42 (“Rule 42”) provides guidance concerning the waiver of penalties and interest, as follows in pertinent part:

.....
(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

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

(a) Timely Mailing:

(i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer.

(ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:

(A) has an excellent history of compliance;

(B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and

(C) presents documentation showing that the return or payment was mailed timely.

.....
(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.

.....

DISCUSSION

Pursuant to Section 59-1-401(13), the Commission is authorized to waive penalties and interest upon a showing of “reasonable cause.” Under the circumstances, reasonable cause does not exist to waive any of the penalties imposed for the 2003 and 2005 tax years. The taxpayers provided no evidence to show that their 2003 and 2005 returns were “timely mailed,” which constitutes reasonable cause under Rule 42(3)(a). The 2003 and 2005 returns that the taxpayers submitted to the Division after the assessments were issued were undated. In addition, the taxpayers did not keep bank records that would indicate that checks for the amounts due for 2003 and 2005 were “written in numerical order” near the times that the returns were due.

In addition, reasonable cause exists under Rule 42(3)(l), which provides for waiver based on “compliance history.” The taxpayers timely filed and paid their Utah income taxes for all years prior to 2003 and all years subsequent to 2005. However, the Commission did not timely receive returns or payments for 2003 and 2005, the two years at issue, and has not received a return or payment for the 2004 tax year. Because a three-year period exists during which the Commission received no returns or payments, none of the penalties should be waived on the basis of compliance history.

The criteria to waive interest is more stringent than the criteria to waive penalties. In accordance with Rule 42(2), interest is waived only if the taxpayers prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error. The taxpayers have not asserted that the Tax Commission error led to their returns and payments not being received in a timely manner. As a result, reasonable cause does not exist to waive interest.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Division properly imposed penalties and interest on the taxpayers. The Commission also finds that reasonable cause does not exist to waive any portion of the penalties or interest. Accordingly, the Commission sustains the Division’s revised assessments of penalties and interest that are based on \$\$\$\$ in additional tax being due for the 2003 tax year and \$\$\$\$ in additional tax being due for the 2005 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

Appeal No. 09-1224

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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay any balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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