

09-3494
INCOME
TAX YEAR: 2004
SIGNED: 03-21-2011

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-3494

Account No. #####

Tax Type: Income

Tax Year: 2004

Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Representative

For Respondent: RESPONDENT REP., from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on February 28, 2011.

On October 28, 2009, the Auditing Division (the "Division") issued a Notice of Deficiency and Estimated Income Tax ("Statutory Notice") to PETITIONER REP. ("Petitioner" or "taxpayer") in regards to the 2004 tax year, in which it imposed \$\$\$\$ of additional income tax, \$\$\$\$ of penalties and \$\$\$\$ of interest (calculated through February 4, 2009), for a total assessment of \$\$\$\$.

The Division imposed the assessment because the taxpayer had not filed a 2004 Utah tax return. Subsequent to the assessment, the taxpayer submitted a 2004 return, which the Division accepted. Based on the return, the parties agree that the taxpayer owes \$\$\$\$ of additional tax for the 2004 tax year. The Division indicates, however, that the taxpayer also owes penalties (a 10% failure to timely file penalty and a 10% failure to timely pay penalty) and interest calculated on the delinquent tax liability of \$\$\$\$\$. The taxpayer asks the Commission to waive the penalties and interest.

APPLICABLE LAW

UCA §59-1-401(13) provides that “[u]pon 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 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:

....

(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. Equitable considerations include:

- (i) whether the commission had to take legal means to collect the taxes;
- (ii) if the error is caught and corrected by the taxpayer;
- (iii) the length of time between the event cited and the filing date;
- (iv) typographical or other written errors; and
- (v) other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

DISCUSSION

Pursuant to Section 59-1-401(13), the Commission is authorized to waive penalties and interest upon a showing of “reasonable cause.” The taxpayer offers the following facts to support a finding of reasonable cause to waive the penalties and interest at issue for the 2004 tax year. The taxpayer was incarcerated in November 2004 and was not released from federal prison until March 2008. The taxpayer’s representative, who is also the taxpayer’s father, indicated that he went to COMPANY 1 to have an income tax return prepared and remitted for his son while he was in prison. The father believes that the return he had prepared was for the 2004 tax year. He claims that his son did not know that the Tax Commission had not received his 2004 return until he received the Division’s Statutory Notice in October 2009. Upon receiving the Statutory Notice, the taxpayer contacted the COMPANY 1 office that his father had hired to prepare his return. The office, which was under new ownership, had no records of any return for 2004 or any other year. At this time, the taxpayer prepared and remitted the 2004 Utah return himself.

The taxpayer’s father indicates that his son was re-incarcerated in federal prison in September 2009 and is not expected to be released for 10 years. He also indicates that his son has insufficient assets to pay the tax liability of \$\$\$\$ itself, much less the penalties and interest added to it. The taxpayer’s father also indicates that except for the 2004 tax year, his son had filed all of his tax returns in a timely manner. For these reasons, he asks the Commission to waive the penalties and interest.

The Division indicates that it has no records to show that the taxpayer’s other tax filings were delinquent, with one exception. The Division states that a \$\$\$\$ penalty was imposed on the taxpayer’s 2003 return, as well as interest in the amount of \$\$\$\$\$. The Division did not know the date that the 2003 return was filed.

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Penalties. Rule 42(3)(l) provides for waiver based on “compliance history.” Other than the 2004 tax year at issue, the taxpayer appears to have timely filed returns that were due or timely paid tax liability that was due except in one other instance. It appears that a small delinquency existed for the 2003 tax year prior to being paid. Accordingly, the taxpayer appears to have a relatively good compliance history, with the exception of the 2004 tax year at issue. It is noted that Rule 42(4)(a)(iii) provides that another factor to be considered in determining whether reasonable cause exists to waive penalties is “the length of time between the event cited and the filing date[.]” The 2004 return was not filed until approximately five years after the return was due. In this case, however, the taxpayer’s father took steps for COMPANY 1 to file the taxpayer’s 2004 return when it was due. The taxpayer filed the 2004 return soon after receiving notice from the Commission that the return had not been filed by COMPANY 1. Given these circumstances, it appears that reasonable cause exists to waive any penalties assessed in this matter.

Interest. The criteria to waive interest are more stringent than the criteria to waive penalties. In accordance with Rule 42(2), interest is waived only if the taxpayer proves that the commission gave erroneous information or took inappropriate action that contributed to the error. There is no evidence to suggest that the taxpayer’s delinquency is the result of any Tax Commission action. 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 reasonable cause exists to waive all penalties at issue and does not exist to waive the interest that has accrued. Accordingly, the Commission finds that the

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taxpayer owes \$\$\$\$ in additional tax for the 2004 tax year, plus interest. However, the Commission waives all penalties that have been imposed. 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 _____, 2011.

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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