

10-2914
TAX TYPE: CORPORATE FRANCHISE
TAX YEARS: 2004 & 2005
DATE SIGNED: 06-30-2011
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: B. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 10-2914</p> <p>Account No. #####</p> <p>Tax Type: Corporate Franchise Tax</p> <p>Tax Year: 2004 and 2005</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: REPRESENTATIVE FOR PETITIONER-1, Representative
REPRESENTATIVE FOR PETITIONER-2, Tax Department

For Respondent: RESPONDENT-1, Taxpayer Services Division
RESPONDENT-2, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 11, 2011 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (“Taxpayer”) requested a waiver of the penalties assessed on its Corporate Franchise Tax filing(s) for the 2004 and 2005 tax years. Taxpayers were assessed late-payment penalties in the amount of \$\$\$\$ for the 2005 tax year. The Division waived the penalty for the 2004 tax year as a “first time error”, thus the remaining issue is whether there is reasonable cause to waive the penalty assessed on the 2005 tax year.

APPLICABLE LAW

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(13) 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.”

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:

- (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...
 - (b) Wrong Filing Place...
 - (c) Death or Serious Illness...
 - (d) Unavoidable Absence...
 - (e) Disaster Relief...
 - (f) Reliance on Erroneous Tax Commission Information...
 - (g) Tax Commission Office Visit...
 - (h) Unobtainable Records...
 - (i) Reliance on Competent Tax Advisor...
 - (j) First Time Filer...
 - (k) Bank Error...
 - (l) Compliance History...
 - (m) Employee Embezzlement...
 - (n) Recent Tax Law Change...
- (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...

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

A taxpayer is required to report to the state any change/correction to the income on the federal return within ninety days, as provided in Utah Code Ann. §59-7-519(3), below in pertinent part:

- (3) If the amount of federal taxable income for any year of any corporation as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change of federal taxable income, a taxpayer shall:
 - (a) report the change or corrected net income within 90 days after the final determination of the change or correction as required to the commission; and

- (b) concede the accuracy of the determination or state where the determination is erroneous.

DISCUSSION

Taxpayer underwent a federal audit for the 2004, 2005, and 2006 tax years. Taxpayer's representative stated the IRS issued its Revenue Agent's Report ("RAR") on May 5, 2009; and they filed amended state returns on July 30, 2009, within the ninety day period provided in Utah Code Ann. §59-7-519(3). Taxpayer included payment of the tax liability (\$\$\$\$ total for 2004 through 2006) with their amended returns. The Division issued a "Notice of Taxes Due & Intent to Lien" for the 2004 and 2005 tax years on September 30, 2010; assessing interest and late payment penalties. On October 21, 2010, the Taxpayer submitted payment of the assessed interest, and asked for a waiver of penalties. Taxpayer's representative stated that they have a good compliance history and could not foresee the federal changes. She argued that because they filed the amended returns within the 90 day period and that the 2004 through 2006 tax years were part of the same audit period, the late payment penalty should be waived.

The Division's representative stated they waived the late payment penalty for the 2004 tax year as a "first time error", but they considered 2005 to be a second error.

The Commission has promulgated Administrative Rule R861-1A-42 and Publication 17 to outline the circumstances the Commission may consider "reasonable cause" justifying a waiver of penalties. The periods at issue were part of one audit conducted on the Taxpayer's federal returns for the 2004 through 2006 tax years. Within ninety days of receiving the RAR, the Taxpayer filed amended state returns and remitted payment of the tax. They also remitted payment of the assessed interest upon receipt of the billing. In part, penalties are imposed so that taxpayers will comply with filing and payment requirements. In this case, the Taxpayer's federal return was audited and they complied with the requirement of filing an amended state return within 90 days of completion of the federal audit. As the audit period was for three years, and it was not until completion of that audit the Taxpayers were aware of the filing errors for those years, it appears reasonable to treat both the 2004 and 2005 tax years as a "first time error", and waive the late payment penalty for the 2005 year as well.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's waiver of the late filing penalty for the 2004 tax year, and grants the Taxpayer's request for a waiver of the late payment penalty assessed on its amended 2005 Corporate Franchise Tax filing. 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: 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.