

11-1351
INCOME TAX
TAX YEAR: 2006 & 2007
SIGNED: 11-04-2011
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 11-1351</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2006 and 2007</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP., Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 22, 2011, for an Initial Hearing in accordance with Utah Code §59-1-502.5. The matter had originally been set for a Telephone Status Conference, but was converted to the Initial Hearing with the consent of the parties. Petitioner (“Taxpayer”) had originally filed an appeal of a non-filing audit against him for tax years 2006 and 2007. Once he was notified of the non-filing, he submitted copies of his returns for each year. The Division has now accepted the returns and posted them over the non-filing audits. The only remaining issue for the hearing was the Taxpayer’s request for waiver of the penalties and interest. Penalties assessed were late filing and late payment penalties for each of the years at issue pursuant to Utah Code 59-1-401. The penalties total \$\$\$\$\$ for 2006 and \$\$\$\$\$ for 2007.

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...

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

DISCUSSION

The Taxpayer explained that they had just moved into Utah. In 2006 and 2007 they had taken their tax information to a CPA to prepare their Utah and Federal tax returns and they thought that the returns had been filed on line. Once they were contacted by the Division about the non-filing, they found copies of the returns and submitted them. However, the Taxpayer acknowledged that he did not think they sent in a payment with the return. The returns that he filed for both years did indicate a tax amount due.

At the hearing the Division representative stated the Division did not object to waiver of the late filing penalties based on the Taxpayer’s reliance on the CPA to file the returns electronically and that this was the Taxpayer’s first time filing in Utah. He did ask that the late payment penalties be upheld because there was no indication that the Taxpayer had attempted to pay the amount due.

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. First time filing in this state and reliance on a tax advisor may be considered cause for waiver of penalties. And based on the recommendation of the Division the late filing penalties should be waived in this matter. However, there is no basis to waive the late payment penalties.

With regard to the waiver of interest, Rule R861-1A-42 specifically provides, “[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” There is no indication of a Tax Commission error in the facts as presented.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds reasonable cause for waiver of the late filing penalties assessed for both tax years 2006 and 2007. The Taxpayer’s request for a waiver of the late payment penalties and interest assessed for both years is denied. 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

Appeal No. 11-1351

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.