

12-1519  
TAX TYPE: PROPERTY TAX  
TAX YEAR: 2012  
DATE SIGNED: 9-28-2012  
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN  
EXCUSED: M. JOHNSON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>PROPERTY TAX DIVISION, UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 12-1519</p> <p>Account No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2012</p> <p>Judge: Phan</p>
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**Presiding:**

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

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYER-1, Attorney at Law  
REPRESENTATIVE FOR TAXPAYER-2, Attorney at Law  
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant  
Attorney General  
For Intervener: INTERVENER, Attorney at Law

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 27, 2012, in accordance with Utah Code §59-2-1007 and §63G-4-201 et seq. RURAL COUNTY filed a Petition to Intervene in this matter, there were no objections and it was granted. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (“Taxpayer”) is appealing a penalty assessed against it for failure to timely file the annual property tax report for tax year 2012. The penalty is assessed pursuant to Utah Code Sec. 59-2-202(3). The amount of the penalty is \$50,000, which is the maximum amount.

2. Taxpayer is an independent (X) power producer that sells power to public utilities. Taxpayer is not a public utility.

3. Taxpayer has been in the phase of a development company as it worked to develop various projects including the one in Utah, and is now more recently, as the projects are developed, transitioning into an operating company.

4. Taxpayer had prior to June 3, 2011, one tax manager who handled filings in numerous states. He left the company on June 3, 2011. A new Senior Tax Manager, NAME-1, was hired and started working August 8, 2011. NAME-1 testified it was after she began employment that she discovered the tax records were not organized effectively and it was difficult to determine what returns were required to be filed and due dates, or even what returns had been filed. She testified that the Taxpayer had somewhere around 80 employees at the time, but only one person to handle the tax filings. The 80 employees were at the Taxpayer’s headquarters in CITY-1. The Taxpayer had other employees at the various project sites.

5. NAME-1 testified that when she started working at the company there were income tax returns that were due and other issues that came up including an audit in STATE-1 and an IRS audit.

6. NAME-1 acknowledged that sometime in February of 2012 the Taxpayer did receive a form titled “Annual Report on Electric Utility Companies.” They did not understand the purpose of the form because, as an independent producer, they did not consider themselves to be a “utility” company. The form was not routed internally to the Taxpayer’s tax department. It was not filled out and returned by the deadline, which was March 1, 2012.

7. On March 26, 2012, the Division sent a Notice of Demand stating that the annual property tax disclosures had not been filed. NAME-1 testified that receipt of the

demand was the first time she became aware that the filing requirements had not been met.

8. After contacting the Division about what needed to be filed, Taxpayer did file the 2012 annual property tax report, and included with it a letter dated April 13, 2012.

9. Taxpayer's tax department has now taken steps to calendar filing requirements in Utah and the other states in which it does business and has hired a second person to help in the department. Taxpayer has also taken steps to make sure the mail is routed to the correct department internally.

10. The Division imposed the penalty for the 2012 tax year and did not recommend waiver based on the filing history of the Taxpayer. The witness for the Division, NAME-2, Property Analyst, testified that 2009 was the first year that the Taxpayer had been required to file in Utah. In 2010 the Taxpayer had filed three requests for extensions and they did not provide all the information required. For the 2011 tax year the Taxpayer did not provide the required information timely and the Division issued a demand letter. The Division did impose a penalty for 2011, but because there were internal questions regarding the process, the Division waived the penalty.

11. The Division has different sections which are responsible for oversight of central assessment of various industries. One of those sections is the Utilities Section, which oversees assessment of public utilities as well as independent power generators such as the Taxpayer's.

12. The Division testified that only two entities currently fit the category of independent power generators, these are an entity that has been filing the form for over 100 years and the Taxpayer. All the other entities overseen by the Utilities Section are public utilities.

#### APPLICABLE LAW

A statement of the Taxpayer is required to be filed by March 1 of each year, as provided in Utah Code §59-2-202(1), set forth below in pertinent part:

- (a) A person, or an officer or agent of that person, owning or operating property described in Subsection (1)(b) shall, on or before March 1 of each year, file with the commission a statement . . . .

The assessment and waiver of any penalty imposed for the failure to file the statement, is governed by Utah Code §59-2-202(3), as follows:

- (a) Except as provided in Subsection (3)(c), the commission shall assess a person a penalty as provided in Subsection (3)(b), if the person, or an officer or agent of that person, fails to file:
  - (i) the statement required under Subsection (1)(a) on or before the later of:
    - (A) March 1; or
    - (B) if the commission allows an extension under Subsection (1)(c) for filing the statement, the day after the last day of the extension period; or
  - (ii) any other information the commission determines to be necessary to:
    - (A) establish valuations for assessment purposes; or
    - (B) apportion an assessment.
- (b) The penalty described in Subsection (3)(a) is an amount equal to the greater of:
  - (i) 10% of the person's estimated tax liability under this chapter for the current calendar year not to exceed \$50,000; or
  - (ii) \$100.
- (c)
  - (i) Notwithstanding Subsections (3)(a) and (4), the commission may waive, reduce, or compromise a penalty imposed under this section if the commission finds there are reasonable grounds for the waiver, reduction or compromise.
  - (ii) If the commission waives, reduces, or compromises a penalty under Subsection (3)(c)(i), the commission shall make a record of the grounds for waiving, reducing, or compromising the penalty.

#### CONCLUSIONS OF LAW

1. The Division has assessed a penalty against the Taxpayer under Utah Code §59-2-202(3)(a) for failure to timely file the 2012 annual property tax report. The Commission may waive, reduce or compromise the penalty under Utah Code §59-2-202(3)(c) if there are reasonable grounds for waiver and the Commission makes a record of the grounds for waiver.

2. "Reasonable grounds for the waiver" is not further defined by statute or by Tax Commission Administrative Rule. Therefore, in determining what would constitute "reasonable grounds," discretion on the part of the Commission is implied. The

Commission has concluded in prior cases that reasonable grounds for waiver would apply if it was a first time filing requirement or a first time error on the part of the property owner. However, these do not apply in this matter as they are not supported by the facts. The Taxpayer had argued that this was a first time error or first time filing for the new tax manager. As noted by the Division, the Commission has consistently applied this to the business as a whole, not a new employee.

3. The Commission has adopted Utah Admin. Rule R861-1A-42 (Rule 42”) which provides guidance as to what constitutes “reasonable cause” for purposes of waiving penalties pursuant to Utah Code §59-1-401(13). However, as noted in §59-1-401(13) that is limited to penalties imposed “under this part.” The penalty at issue in this matter is imposed under Utah Code §59-2-202, a different part of the code. Although technically not directly applicable, as the Commission has no rule regarding penalties imposed under Utah Code §59-2-202, it could consider similar factors in determining what constitutes “reasonable grounds” as those promulgated for “reasonable cause” under Rule 42. The Commission is not necessarily limited to the same factors.

4. In this matter, the penalty assessed for failure to file the annual report timely is one that may be necessary to generate compliance under Utah Code §59-2-202. The penalty is 10% of the estimated tax liability not to exceed \$50,000. Because of the amount of the Taxpayer’s liability, this penalty is the maximum of \$50,000. Compliance in filing the annual property tax report on time is needed because of the subsequent deadlines set by the statute. The annual property tax return is required to be filed by March 1 under Utah Code §59-2-202. The Division is required to issue its assessment by May 1 under Utah Code §59-2-201. If the Division does not have the report it still must issue its assessment. If the assessment contains error because a property owner has not provided the annual report, it may be appealed by the property owner and appeals may not be resolved before budgets are set by the counties and taxing entities.

5. The representatives for the Taxpayer pointed out that the Taxpayer has already taken steps to insure that the filing is timely for subsequent years. They have created a calendar for all the various filings and hired a second person to help in the Tax Department. They also point to the reasonable cause provisions at Rule 42 for purpose of

waiver of penalties. They acknowledged this is not a first time filing on the part of the Taxpayer even if it was the first filing on the part of the new tax manager. Waiver may be made based on Rule 42 (3)(j) for a first time filing. The Taxpayer also argues error on the part of the Division, which is basis for waiver at Rule 42(3)(f). The error asserted by the Taxpayer was using confusing or misleading terminology by calling the report an “Annual Report on Electric Utility Companies.” The Taxpayer equated “utilities” to a “public utility.” The Division noted the Taxpayer could have called and asked about the report if they were confused. The Taxpayer’s representatives pointed out that the Taxpayer did correct its error by filing the report very soon after being notified of the error, although acknowledged this did not occur until after the Division had already caught the error and made a demand for the report. A taxpayer catching and correcting their own error prior to any Tax Commission action may be considered cause under Rule 42(4). However, because this penalty is not one issued under Utah Code Sec. 59-1-401, the Commission may consider Rule 42 factors, but they are not controlling. The Commission may consider other factors, which it deems to be reasonable grounds.

6. Upon review of the evidence and the law in this matter, there are factors that support reasonable grounds for a reduction of the penalties under Utah Code Sec. 59-2-202(3)(c). This was a newer company having gone through the transition from developmental to operational. There was the personnel change in the tax department as well as the report containing the term “utility,” which the Division equated to any power generation, rather than public utility and the Taxpayer equated to a “public utility.” The Taxpayer filed the report quickly after its failure to file had been brought to its attention and has taken steps to avoid filing late in the future. The penalty did appear to get the Taxpayer’s attention and they have now taken steps to avoid late filing in the future. Due to the amount of the tax, the penalty is the maximum of \$50,000. Because this is not a first time error or first time filing on the part of the Taxpayer, the penalty should not be abated in its entirety; however, the penalty should be reduced to \$10,000 based on the factors indicated as reasonable grounds.

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Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission reduces the penalty assessed against the Taxpayer for the late filing of its 2012 annual property tax report to \$10,000. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

**Notice of Appeal Rights:** 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 Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. 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 Ann. §59-1-601 et seq. and §63G-4-401 et seq.