

12-1980
TAX TYPE: PENALTY AND INTEREST
TAX YEAR: 2011
DATE SIGNED: 2-21-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 12-1980 Account No. ##### Tax Type: Penalty - Corporate Franchise Tax Year: Year ending 12/31/11 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearing:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative
For Respondent: RESPONDENT-1, from Taxpayer Services Division
RESPONDENT-2, from Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 28, 2013 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5.

PETITIONER requested a waiver of “underestimated prepayment penalties” that it incurred on its corporate franchise account for the tax year ending December 31, 2011. On June 18, 2012, the Taxpayer Services Division (the “Division”) issued a Waiver Decision in which it denied the request to waive the penalties.

The amount of the underestimated prepayment penalties at issue is \$\$\$\$\$. The Division explains that in accordance with Utah Code Ann. §59-7-504, the taxpayer was required to make four payments of estimated tax for the 2011 tax year. The four estimated payments were due on April 15, 2011, June 15, 2011, September 15, 2011, and December 15, 2011. The taxpayer paid its 2011 liability by making a prepayment of \$\$\$\$\$ on December 15, 2011 and a final payment of approximately \$\$\$\$\$ on February 24, 2012. Because the taxpayer did not make any of the required prepayments that were due on April 15,

2011, June 15, 2011, and September 15, 2011, three penalties were imposed, one for each prepayment that was not made. The penalties were determined in accordance with UCA §59-1-401(4) and total \$\$\$\$\$.

The taxpayer admits that it did not make the first three prepayments that were due for the 2011 tax year. It also admits that the \$\$\$\$\$ amount of penalties was correctly calculated and imposed in compliance with Utah law. The taxpayer, however, asks for a waiver of the penalties because the \$\$\$\$\$ amount seems high in comparison to the remaining \$\$\$\$\$ of tax that was due when it filed its 2011 return in early 2012.

The Division stated that it checked to see if the taxpayer could qualify for a waiver of the 2011 penalties due to its compliance history. The Division stated that its policy is to check the taxpayer's account for the last three years before the 2011 year at issue (in this case the 2008, 2009, and 2010 tax years). If the taxpayer has no penalties for these three prior years, the Division's policy would allow it to find that the taxpayer's compliance history was sufficient to warrant a waiver of the 2011 penalties. The Division found, however, that the taxpayer incurred the same underestimated prepayment penalties for 2010 as it did for 2011 because it also failed to make the first three prepayments that were due for the 2010 tax year. For these reasons, the Division found that "reasonable cause" to waive penalties, as set forth in Utah Admin. Rule R861-1A-42 ("Rule 42"), did not exist. Given these circumstances, the Division asks the Commission to sustain its denial of the taxpayer's request to waive the 2011 penalties.

APPLICABLE LAW

Utah Code Ann. §59-7-504 provides that corporate franchise taxpayers are required to make payments of estimated tax in certain circumstances, as follows:

- (1) Except as otherwise provided in this section, each corporation subject to taxation under this chapter having a tax liability of \$3,000 or more in the current tax year, or which had a tax liability of \$3,000 or more in the previous tax year, shall make payments of estimated tax at the same time and using any method provided under Section 6655, Internal Revenue Code.
- (2) The following are modifications or exceptions to the provisions of Section 6655, Internal Revenue Code:
 - (a) for the first year a corporation is required to file a return in Utah, that corporation is not subject to Subsection (1) if it makes a payment on or before the due date of the

return, without extensions, equal to or greater than the minimum tax required under Section 59-7-104 or 59-7-201;

(b) the applicable percentage of the required annual payment, as defined in Section 6655, Internal Revenue Code, for annualized income installments, adjusted seasonal installments, and those estimated tax payments based on the current year tax liability shall be:

Installment	Percentage
1st	22.5
2nd	45.0
3rd	67.5
4th	90.0

(c) large corporations shall be treated as any other corporation for purposes of this section; and

(d) if a taxpayer elects a different annualization period than the one used for federal purposes, the taxpayer shall make an election with the Tax Commission at the same time as provided under Section 6655, Internal Revenue Code.

(3) A penalty shall be added as provided in Section 59-1-401 for any quarterly estimated tax payment which is not made in accordance with this section.

(4) There shall be no interest added to any estimated tax payments subject to a penalty under this section.

UCA §59-1-401 provides for the calculation of penalties imposed on corporate franchise accounts, including those penalties arising under Section 59-7-504, as follows in pertinent part:

(4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there shall be added a penalty in an amount determined by applying the interest rate provided under Section 59-1-402 plus four percentage points to the amount of the underpayment for the period of the underpayment.

(b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(ii) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:

(A) the original due date of the tax return, without extensions, for the taxable year; or

(B) with respect to any portion of the underpayment, the date on which that portion is paid.

(iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid.

(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:

(i) for a person filing a corporate franchise or income tax return under Chapter 7, Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

(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 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.

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.”

The Commission has promulgated Utah Admin. Rule R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

....

(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:

(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.

(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.
- (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.

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

DISCUSSION

Section 59-1-401(13) authorizes the Commission to waive penalties upon a showing of reasonable cause. The Commission has promulgated Rule 42 and USTC Publication 17 to outline the circumstances that the Commission may consider “reasonable cause” to justify a waiver of penalties.

The taxpayer admits that the Division correctly imposed the \$\$\$\$ of penalties that are at issue for the 2011 tax year. The taxpayer, however, asks for a waiver because the amount of penalties seems high in comparison to the approximately \$\$\$\$ of remaining tax that was due when the taxpayer filed its 2011 return. The Division explained how each of the three penalties was calculated on the basis of the date that a prepayment was due, but not made. Accordingly, the penalty imposed for the first missed prepayment was higher than the penalty imposed for the second missed prepayment, and the penalty imposed for the second missed prepayment was higher than the penalty imposed for the third missed prepayment. The taxpayer stated it understood the penalties to be correctly imposed, but wanted to be considered for a waiver.

Under these circumstances, Rule 42(3)(1) is the only subsection of the rule under which the taxpayer can show “reasonable cause” and qualify for a waiver of the 2011 penalties. Rule 42(3)(1) provides that a taxpayer's compliance history may be considered when determining whether “reasonable

cause” exists to waive a penalty. The taxpayer incurred underestimated prepayment penalties for failing to make the first three prepayments that were due for the 2010 tax year, yet failed to make the first three prepayments again for the 2011 tax year. This compliance history is insufficient to qualify for a waiver of the 2011 penalties under Rule 42(3)(l). Accordingly, the Division’s denial of the waiver request should be sustained.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division’s action and denies the taxpayer’s request to waive the underestimated prepayment penalties imposed on the taxpayer’s corporate franchise account for the 2011 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 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 _____, 2013.

R. Bruce Johnson
Commission Chair

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun

Appeal No. 12-1980

Commissioner