

12-2522  
INCOME  
TAX YEARS: 2005, 2006, & 2007  
SIGNED:07-22-2013  
COMMISSIONERS: R. JOHNSON, M. CRAGUN. R. PERO  
EXCUSED: D. DIXON

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1. AND PETITIONER 2,

Petitioners,

v.

AUDITING DIVISION OF THE UTAH  
STATE TAX COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 12-2522

Account No. #####-1

Tax Type: Income Tax

Tax Years: 2005, 2006 & 2007

Judge: Phan

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REP., CPA, By Telephone  
PETITIONER 1, By Telephone

For Respondent: RESPONDENT REP., Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code 59-1-502.5 on July 9, 2013. It had been scheduled for a Telephone Status Conference on that date, but the conference was converted to the Initial Hearing. Petitioners (the "Taxpayers") had originally appealed the audit assessments for all three years to contest the amount of the tax, penalties and interest. At the hearing they explained that after being provided additional information from Respondent ("Division") they now conceded that they owed the tax amounts indicated in the audits for each year. However, they requested waiver of the penalties. The statutory Notices of Deficiency and Estimated Income Tax had been issued on September 11, 2012. The amounts of the penalties for each year were: \$\$\$\$\$ for 2005, \$\$\$\$\$ for 2006 and \$\$\$\$\$ for 2007. The penalties are 10% failure to file and 10% failure to pay penalties assessed under Utah Code Sec. 59-1-401.

APPLICABLE LAW

The penalty for failure to file a tax return within the time prescribed by law including extensions is the

greater of \$20 or 10% of the unpaid tax due on the return under provisions a Utah Code Sec. 59-1-401(2).

An additional penalty for failure to pay tax due may be assessed under the provisions that are set out at Utah Code Sec. 59-1-401(3). This may be a graduated penalty based on the period of time between the due date and payment of the tax, but could be as high as 10% of the unpaid tax.

Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received. (Utah Code Sec. 59-1-402 (6).)

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. (Utah Code Sec. 59-1-401(13).)

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...

#### DISCUSSION

The Taxpayers were residents of the State of STATE 1 for the tax years at issue and had not been residents of Utah. In STATE 1 they had no state income filing requirement. Taxpayers had a limited partnership interest in a Utah business. They explained that it had been an investment in a start-up business

they made to help out the son of a friend and there had been some loss years. They were unaware of any obligation to file a Utah return and had not been provided information from the business to indicate there was Utah source income. After receiving the audit notices, they had been told by the business in writing that the Utah portion was only 10% of the income. With this information, Taxpayers prepared and filed returns. Subsequently, after the Division had provided copies of the filings from the business showing that 100% of the income was Utah source, Taxpayers concluded they did in fact owe the tax amounts indicated in the audits. Taxpayers did not contest the interest.

The Division's representative explained that failure to file and failure to pay penalties had been assessed with the audits. He did note that as far as the Division was aware, this was the first time the Taxpayers had an obligation to file in Utah and there had been no Utah returns filed for prior years. The Representative also stated that the Division did not think that the Taxpayers had been trying to avoid the tax, that instead this was just a lack of knowledge on their part that they were required to file Utah returns.

From the information presented by the parties in this matter there is reasonable cause for waiver of the penalties under Utah Admin. Rule R861-1A-42, due to this being the first time filing in Utah and additionally, that the Taxpayers were not made aware of the filing requirements until after the audit notices were issued in September 2012, after all three audit years were past due. There was not a showing that would provide the basis for waiver of interest and that had not been requested by the Taxpayers.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the audit penalties assessed for tax years 2005, 2006 and 2007. The audit tax and interest for all three years is upheld. 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

Appeal No. 12-2522

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 Cragun  
Commissioner

Robert P. Pero  
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.** Petitioners may contact the Taxpayer Services Division about setting up a payment plan, at (801) 297-7703.