

13-1227  
TAX TYPE: PROPERTY  
TAX YEAR: 2012  
DATE SIGNED: 7-22-2013  
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER Petitioner,</p> <p>vs.</p> <p>PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 13-1227</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:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE, By Telephone  
For Respondent: RESPONDENT REPRESENTATIVE-1, Deputy Director Property Tax  
RESPONDENT REPRESENTATIVE-2, Property Tax Division  
RESPONDENT REPRESENTATIVE-3, Property Tax Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on July 15, 2013, in accordance with Utah Code Sec. 59-1-502.5. Petitioner ("Property Owner") is appealing the penalty assessed by the Respondent ("Division") under Utah Code §59-2-207, for the late filing of the property tax report for the 2012 tax year.

APPLICABLE LAW

A statement of the Taxpayer is required to be filed by March 1 of each year, as provided in Utah Code §59-2-207(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 file with the commission, a sworn statement on or before March 1 of each year.

The assessment and waiver of any penalty imposed for the failure to file the statement, is governed by Utah Code §59-2-207(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.

#### DISCUSSION

The representative for the Property Owner explained that this was the first year the reports had been emailed for an electronic filing instead of mailed to the Property Owner. In the past the Division had mailed the returns and this was a change on the part of the Division. He explained that he did not see the email, however, because the email had gone into the spam file and did not come to his attention. He stated that he received a letter sent through regular mail after the return was due and that was when the filing came to his attention. He called the Division, and the Division re-emailed the forms. The representative for the Property Owner explained that the forms were very difficult to work with for several reasons but he did get the return filed shortly after the forms were received.

The representative for the Division explained that the Division had mailed a certified letter notifying the Property Owner that the Division was changing to an on-line electronic system rather than mailing a paper return as they had in the past. This letter had been received by the Property Owner and signed for on January 3, 2013. The Division also provided a copy of the letter issued March 11, 2013, mailed to the Property Owner. In the letter the Division had stated that the 2013 Annual Return for Assessment had not been received. The Division acknowledged that the Property Owner had contacted the Division upon receipt of the letter and after the Division had re-emailed the electronic forms to the

Property Owner, the Property Owner had filed the return within three days of the re-email. Additionally the Division looked at the Property Owner's prior account history and stated that for the four years prior to 2013 the Property Owner had been timely in filing the Annual Returns.

The Commission may waive penalties for failure to timely file these reports based on reasonable cause. The Commission has considered account history as a factor in determining cause and in this case the Property Owner had a good account history up to this filing year. Additionally, the change to electronic filing and the Division's emailing of the return was an issue for the Property Owner with the email going into a spam file. The fact that the Property Owner had been filing timely previously with the mailed forms supports its position that this change was a factor in the late filing. Based on these factors, there is reasonable cause for waiver of the penalty.

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Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission waives the penalty assessed under Utah Code §59-2-207. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 administrative appeal rights in this matter. In that event, the Property Tax Division is ordered to adjust its records in accordance with this order. The Property Tax Division is also ordered to calculate the final adjustments to the values apportioned to tax districts as a result of this order and to deliver that information to the affected counties on behalf of the Commission. The auditors of the affected counties are ordered to use the information so provided to adjust their tax roles in accordance with this order.

Appeal No. 13-1227

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner