

17-1020

TAX TYPE: PROPERTY TAX

TAX YEAR: 2017

DATE SIGNED: 8-17-2017

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	INITIAL HEARING ORDER
Petitioner,	Appeal No. 17-1020
v.	Parcel No. #####
PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION,	Tax Type: Property Tax
Respondent.	Tax Year: 2017
	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, By Telephone
For Respondent: RESPONDENT-1, Manager, Property Tax Division
RESPONDENT-2, Analyst, Property Tax Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on July 17, 2017, for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. The matter before the Commission is the appeal filed by Petitioner (“Property Owner”) of a late filing penalty assessed under Utah Code Sec. 59-2-202, for tax year 2017. Respondent (“Division”) had assessed the penalty because the Property Owner had not filed its annual centrally assessed property report, which was due March 1, 2017.

APPLICABLE LAW

A statement of the Property Owner 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:
 - (i) signed and sworn to by the person,

- (ii) officer, or agent; showing in detail all real property and tangible personal property located in the state that the person owns or operates;
- (iii) containing the number of miles of taxable tangible personal property in each county . . . and
- (iv) containing any other information the commission requires.

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.

Most property tax proceedings before the Commission involve a property's value or a property tax exemption, not a late filing penalty. For property tax valuation cases, the Utah Supreme Court has found that the burden of proof is generally on the petitioner to support its position.¹ For property tax exemption cases, the Court has also found that the burden of proof is upon the taxpayer.² The Commission is not aware of any court decision or other precedent that

¹ See *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000).

² See *Corporation of the Episcopal Church in Utah v. Utah State Tax Comm'n*, 919 P.2d 556 (Utah 1996), in which the Court stated that “[t]he burden of establishing the exemption lies

would provide for the burden of proof to be different for a case involving a late filing penalty imposed for property tax purposes. Accordingly, the petitioner has the burden of proof in this matter.

DISCUSSION

The representative for the Property Owner explained that the employee who had prepared these types of property tax reports in other states where the Company had been doing business had retired after 42 years. The new employee, who was not as familiar with the process, just followed what the now retired employee had done in the prior year and did not realize that the Property Owner now had a Utah filing requirement.

The representative for the Division stated at the hearing that as far as the Division was aware, 2017 was the first year that the Property Owner was required to file in Utah. Because this was the first time filing in Utah, the Division did not object to waiver of the penalty.

The Commission may waive penalties for failure to timely file these reports based on reasonable cause. Based on the fact that this appears to be the first time that the Property Owner was required to file an annual property tax report in Utah, good cause has been shown for waiver under Utah Code Sec. 59-2-202(3).

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission waives the penalty assessed under Utah Code §59-2-202. 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, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

with the entity claiming it”

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner