

APPEAL #: 23-1162
TAX TYPE: CENTRALLY ASSESSED
TAX YEAR: 2023
DATE SIGNED: 9/19/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p>Petitioner,</p> <p>v.</p> <p>CENTRALLY ASSESSED DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 23-1162</p> <p>Account No: #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2023</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Manager/Registered Agent

For Respondent: RESPONDENT'S REP-1, Oil & Gas Valuation Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on August 28, 2023, in accordance with Utah Code Sec. 59-1-502.5. Petitioner (the "Taxpayer") is appealing the penalty assessed by Respondent (the "Division") under Utah Code Ann. §59-2-207, for the late filing of the property tax statement for the 2023 tax year. The penalty amount was the \$100 minimum penalty.

APPLICABLE LAW

A statement of the Taxpayer is required to be filed by March 1 of each year, as provided in Utah Code Ann. §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, on a form prescribed by the commission, a sworn statement on or before March 1 of each year:
 - (i) showing in detail all real property and tangible personal property located in the state that the person owns or operates; and

- (ii) 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 Ann. §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

At the Initial Hearing, the Taxpayer's representative stated that it was a small company owned by her husband and herself. The Taxpayer explained that the past few years have been difficult and they were trying to stay afloat. She stated that they have another business in LOCATION-1, which makes it more difficult to stay on top of their two businesses. The Taxpayer explained that she had suffered from COVID-19 three times, and her husband has suffered from Parkinson's disease for the last eight years.

The representative for the Division stated that the annual statement is due by March 1 of every year. Since the Taxpayer had not filed the statement, the Division sent a Notice of Demand on March 10.

However, there was no response and on DATE the Division sent the Notice of Estimated Assessment and Penalty. The Taxpayer timely appealed the penalty amount to the Tax Commission.

The Division's representative stated that he has been working with the Taxpayer for many years and prior to the tax year at issue, the only statement that had been filed late was the statement for tax year 2020. The Division's representative stated that the Taxpayer did not appeal the penalty assessed for tax year 2020 for filing the statement late. The Division's representative stated that the Division had no position on whether the penalty should be waived, and would leave that decision to the Commission.

Under Utah Code Ann. §59-2-207(3)(c), the Commission is authorized to waive, reduce, or compromise the penalty imposed for the late filing of the annual statement upon a finding of "reasonable grounds" and upon making a record of such grounds. As a result, the Commission must determine whether "reasonable grounds" exist to waive the penalty at issue.

The Commission has previously addressed the waiver of a penalty imposed on a centrally assessed taxpayer for the late filing of an annual statement in *Appeal No. 12-1519* (Findings of Fact, Conclusions of Law, and Final Decision Sept. 28, 2012).¹ In that case, the Commission stated that because "reasonable grounds" for the waiver of a penalty imposed for the late filing of the annual statement is not defined by statute or by Tax Commission administrative rule, discretion on the part of the Commission is implied when determining what would constitute "reasonable grounds." In *Appeal No. 12-1519*, the Commission further explained that it has adopted Utah Admin. Rule R861-1A-42 ("Rule 42"), which provides guidance as to what constitutes "reasonable cause" for purposes of waiving penalties under Utah Code Ann. Title 59, Chapter 1, Part 4, Penalties, Interest, and Confidentiality of Information.²

¹ Redacted copies of this and other selected decisions may be viewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

² Subsection 59-1-401(14) provides that "[u]pon making a record of the commission's actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part." Utah Admin. Rule R861-1A-42 provides guidance as to when "reasonable cause" exists to waive penalties pursuant to Subsection 59-1-401(14), as follows in pertinent part:

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- (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...

However, Rule 42 does not address what constitutes “reasonable grounds” for purposes of waiving penalties under Utah Code Ann. §59-2-207(3)(c). Furthermore, Utah Code Ann. §59-1-401(14), the statute that allows for penalties to be waived for “reasonable cause,” is expressly limited to penalties imposed “under this part,” which refers to Title 59, Chapter 1, Part 4 of the Utah Code. The penalty at issue in the appeal now before the Commission is imposed in a different “part” of the Utah Code, specifically in Title 59, Chapter 2, Part 2 of the Utah Code. For these reasons, the Commission found in *Appeal No. 12-1519* that the Rule 42 factors that constitute “reasonable cause” are not, technically,

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- (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.

directly applicable to determining what constitutes “reasonable grounds” for purposes of waiving penalties imposed for the late or incomplete filing of a centrally assessed taxpayer’s annual statement.

Nevertheless, because of its discretion in determining what constitutes “reasonable grounds” for purposes of waiving penalties imposed under the Utah Property Tax Act, the Commission also found in Appeal No. 12-1519 that it may consider, but is not limited to, the “reasonable cause” factors found in Rule 42 when determining whether “reasonable grounds” exist to waive a penalty like the one at issue in the instant case. As a result, the Commission should consider the “reasonable cause” factors found in Rule 42 to decide whether “reasonable grounds” exist to waive the penalty at issue in this appeal.

Although Rule 42 is not directly binding in this case, the Commission notes that Rule 42, Subsection (3)(1) allows for waiver based on compliance history. In the instant case, the Taxpayer has had only one prior late filing over the course of many years. Furthermore, the Taxpayer had not requested a waiver of that prior penalty. Therefore, there are reasonable grounds for waiver of the penalty assessed for tax year 2023. However, the Commission cautions the Taxpayer that it will be more difficult for the Commission to find reasonable grounds to waive another penalty.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission waives the penalty assessed under Utah Code Ann. §59-2-207 for tax year 2023. 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

Appeal No. 23-1162

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.

DATED this ____ day of ____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner