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BEFORE THE UTAH STATE TAX COMMISSION

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GREENTOWN OIL CO, LLC,  Petitioner,  v.  PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 22-1036  Account No: 13745315-004-PCA Tax Type: Penalty/Interest Tax Year: 2022    Judge: Jensen
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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: Rhonda Ahmad, for the Taxpayer  
For Respondent: J.J. Alder, for the Division  
Joseph Thomas, for the Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on June 23, 2022 in accordance with Utah Code Sec. 59-1-502.5. Petitioner (the "Taxpayer") is appealing the penalty assessed by the Respondent ("Division") under Utah Code Ann. §59-2-207, for the late filing of the annual property tax statement for the 2022 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 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...

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.

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.<sup>1</sup> For most property tax exemption cases, the Court has also found that the burden of proof is upon the entity requesting the exemption.<sup>2</sup> The Commission is not aware of any court decision or other precedent that 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

Utah Code Ann. §59-2-207(1)(a) requires a property owner to file its annual statement with the Division on or before March 1<sup>st</sup> of each tax year. Compliance in filing the annual property tax statement on time is needed because of subsequent statutory deadlines concerning the assessment of centrally assessed property. The Taxpayer admits that it did not submit a complete 2022 annual statement by the

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<sup>1</sup> 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).

<sup>2</sup> 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 with the entity claiming it . . . .”

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March 1, 2022 deadline. As a result, the Division properly imposed a penalty under Utah Code Ann. §59-2-207(3).

The Taxpayer, however, asks the Commission to waive the penalty. The Taxpayer's representative explained that several years before the 2022 tax year at issue, the Taxpayer had sold the oil and gas property at issue in this case to another entity. That entity was responsible for filing and paying property taxes. For some time before the 2022 tax year, the entity that owned the subject property was in bankruptcy. However, just before the March 1, 2022 deadline for filing the 2022 annual statement required under Utah Code Ann. §59-2-207(1), the bankruptcy court determined that the other entity had defaulted on its purchase agreement. Based on this, the bankruptcy court transferred ownership of the subject property to the Taxpayer. The Taxpayer's representative testified that neither the bankruptcy court nor the previous owner gave the Taxpayer notice of the transfer of ownership.

The Taxpayer's representative testified that as soon as the Taxpayer became aware of its ownership of the subject property and its obligation to file a 2022 annual statement, it did so. The Division's representatives confirmed receipt of the Taxpayer's 2022 annual statement on April 4, 2022. Based on the information in the Taxpayer's 2022 annual statement, the Division calculated the amount of the penalty at issue in this case at \$212.20. The Division's representatives indicated that the Division did not oppose waiving the penalty it assessed for 2022 and would leave the matter to the sound discretion of the Commission.

Because the Taxpayer admits that the Division properly imposed the penalty, the issue before the Commission in this appeal is whether the penalty should be waived, reduced, or compromised. Under Utah Code Ann. §59-2-207(3)(c), the Commission is authorized to waive, reduce, or compromise the penalty imposed for the late or incomplete 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 return in *Appeal No. 12-1519* (Findings of Fact, Conclusions of Law, and Final Decision Sept. 28, 2012).<sup>3</sup> In that case, the Commission stated that because "reasonable grounds" for the waiver of a penalty imposed for the late filing of the annual return is

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<sup>3</sup> 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>.

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.<sup>4</sup> However, Rule 42 does not address what constitutes “reasonable grounds” for purposes of

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<sup>4</sup> Subsection 59-1-401(14) 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.” Rule 42 provides guidance as to when “reasonable cause” exists to waive penalties pursuant to Subsection 59-1-401(14), 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
    - (i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.
    - (ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.
    - (iii) The death or illness must have occurred on or immediately prior to the due date of the return.
  - (d) Unavoidable Absence...
  - (e) Disaster Relief
    - (i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.
    - (ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.
    - (iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.
  - (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:
    - (i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.
    - (ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.
  - (k) Bank Error...

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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, 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.

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- (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.

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Rule 42(3)(j) provides for a waiver for a first time filer and provides that the Commission should consider the timeliness with which a taxpayer acted after it learned of a filing obligation. The Division did not dispute the Taxpayer's claim that this was the first time that the Taxpayer had a filing obligation for the subject property following the change in ownership caused by bankruptcy court actions. The Division did not dispute that although the Taxpayer received ownership of the subject property just before the March 1, 2022 filing deadline, it did not become aware of the change in ownership until after the March 1, 2022 filing deadline. The Division did not dispute that as soon as the Taxpayer discovered its late filing of an annual statement, it worked with the Division to satisfy the requirements of Utah Code Ann. §59-2-207(1)(a).

Although Rule 42 is not directly binding in this case, the Commission notes that Rule 42(3)(j) provides for a waiver of penalty by a first time filer. The circumstances of this case fit with those described in Rule 42(3)(j) in that the Taxpayer did not own the company and did not have a requirement to file an annual statement until it received ownership of the subject property just before the March 1, 2022 filing deadline. The Taxpayer did not become aware of the change in ownership until after the March 1, 2022 filing deadline, and took immediate actions to resolve filing requirements after learning of the filing requirement.

Based on the information presented at the initial hearing, there is good cause to waive the penalty imposed by the Division for the 2022 tax year.



Clinton Jensen  
Administrative Law Judge

DECISION AND ORDER

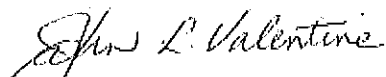
The Commission finds reasonable grounds to waive the penalty, considering the recommendation of the Division. However, the Commission cautions the Taxpayer that it will be more difficult for the Commission to find reasonable grounds to waive a second penalty. Based on the foregoing, the Commission waives the penalty assessed under Utah Code Ann. §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.

DATED this **26** day of **July**, 2022.

  
John L. Valentine  
Commission Chair

  
Rebecca L. Rockwell  
Commissioner



  
Michael J. Cragun  
Commissioner

  
Jennifer N. Fresques  
Commissioner

USTC – Appeal  
**Certificate of Mailing**  
Utah State Tax Commission

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**Greentown Oil Co. LLC (Petitioner) vs Property Tax Division (Respondent)**

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**22-1036**

**Greentown Oil Co. LLC**  
3550 Barron Way Ste. 13A  
Reno, NV 89511

**Petitioner**

**Brian Horne**  
1398 South 600 West  
Woods Cross, UT 84010

**Representative for Petitioner**

**Property Tax Division**  
210 North 1950 West  
Salt Lake City, UT 84134

**Respondent**

\*\*\*\* CERTIFICATION \*\*\*\*

I certify on this date I mailed a copy of the foregoing document addressed to each of the above named parties.



**July 26, 2022**

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Date

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Signature