
BEFORE THE UTAH STATE TAX COMMISSION

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| GEM AIR LLC, Petitioner, v. PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent. | INITIAL HEARING ORDER Appeal No. 22-1217 Account No: 14279050-004-PCA Tax Type: Centrally Assessed/Penalty Tax Year: 2022 Judge: Shannon Halverson |
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Presiding:
Shannon Halverson, Administrative Law Judge

Appearances:
For Petitioner: Michele Mylan, Taxpayer's representative
For Respondent: Devin Hales, Property Tax Division
Kristen Lefort, Property Tax Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on August 31, 2022 in accordance with Utah Code Ann. §59-1-502.5. Petitioner ("Taxpayer") is appealing the penalty assessed by the Respondent ("Division") under Utah Code Ann. §59-2-202 for the Taxpayer's late filing of its 2022 annual property tax statement.

APPLICABLE LAW

A statement of the Taxpayer is required to be filed by March 1 of each year, as provided in Utah Code Ann. §59-2-202(1), set forth below in pertinent part:

- (1)(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, officer, or agent;
 - (ii) 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:
 - (A) that the person owns or operates; and
 - (B) as valued on January 1 of the year for which the person, officer, or agent is furnishing the statement; 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 Ann. §59-2-202(3), as follows:

- (3)(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. For most property tax exemption cases, the Court has also found that the burden of proof is upon the entity requesting the exemption. 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. §59-2-202(1)(a) requires a property owner to file its annual statement with the Division on or before March 1st 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 acknowledges that it did not submit a complete 2022 annual statement

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by the March 1, 2022 deadline. Thus, the Commission finds that the Division properly imposed a penalty under Utah Code Ann. §59-2-202(3).

The Taxpayer's representative stated at the Initial Hearing that she is asking the Commission to waive the 10% penalty assessed by the Division. The Taxpayer's representative explained that the Taxpayer's filing was late due to a change in staffing. She stated that she came on board with the Taxpayer on January 10, 2022 and was unaware that the Taxpayer owed property taxes. She stated that the only reason she found out that the annual statement was due was because she received a notice from the Division stating that the assessment was late. She stated that the Taxpayer's office manager was not aware of what was going on and needed to get clarification on submitting the statement. She stated that she is respectfully requesting a waiver of the penalty and stated that the Taxpayer did not intentionally file the annual statement late. She stated that the late filing was just an oversight by the Taxpayer. She indicated that the annual statement was submitted on April 22, 2022.

The Division's representatives stated at the Initial Hearing that this is the second year in five years that the Taxpayer has been assessed a penalty for filing an annual statement late. They indicated that the Taxpayer filed the annual statement late in 2019 and again in 2022, which is the year at issue in this appeal. They stated that the Division sent the Taxpayer a reminder email on or around March 30, 2022 and had a conversation over the phone with the Taxpayer on March 30, 2022. They stated that they told the Taxpayer's representative that the annual statement was due on March 1, 2022 and explained that the form was already late. They indicated that they advised the Taxpayer that the annual statement needed to be filed before May 1, 2022 or the Taxpayer would incur an estimation. They stated that the Division sent a follow up email on April 14, 2022, and the Taxpayer filed the annual statement on April 22, 2022.

The Division's representatives indicated that the penalty amount was estimated as \$2,380.28 and also indicated that the late filing penalty assessed in 2019 was not appealed or waived. They indicated that the Division did not have a recommendation on whether the penalty assessed for the 2022 tax year should be waived and would leave the matter to the discretion of the Commission.

The Taxpayer's representative acknowledged that the annual statement was filed late. Thus, the Division properly imposed the penalty, and the only issue before the Commission in this appeal is whether the penalty should be waived, reduced, or compromised. Under Utah Code Ann. §59-2-202(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 statement in *Appeal No. 12-1519*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 are 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 Administrative 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 However, Rule 42 does not address what

¹ See *Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 12-1519*, Utah State Tax Commission (September 28, 2012). 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 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. . .
- (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:
 - (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...

constitutes “reasonable grounds” for purposes of waiving penalties under Utah Code Ann. §59-2-202(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, and the penalty for filing an annual statement late 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.

However, because the Commission has discretion to determine 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.

The Commission may find reasonable cause to waive penalties based on a taxpayer’s compliance history, as provided in Subsection (3)(l) of Rule 42:

(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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- (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.

In reviewing a taxpayer's compliance history, the Commission generally looks back to see if there were any errors preceding the year in question. In this appeal, the Division's representatives stated that its records indicate that the Taxpayer was previously assessed a penalty for filing an annual statement late in the 2019 tax year. Under such circumstances, the Commission finds that reasonable cause to waive the penalty at issue in this appeal does not exist under Rule 42(3)(l) based on the Taxpayer's compliance history. As a result, the Commission finds that the late filing penalty that the Division imposed for the 2022 tax year should not be waived.



Shannon Halverson
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer's request for a waiver of the penalty assessed under Utah Code Ann. §59-2-202. 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. 22-1217

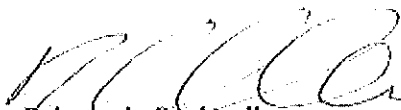
Failure to request a Formal Hearing will preclude any further administrative appeal rights in this matter. In that event, the Property Tax Division is ordered to adjust its records in accordance with this order. The Property Tax Division is also ordered to calculate the final adjustments to the values 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.

BY ORDER OF THE COMMISSION:


DATED this 27th day of October, 2022.

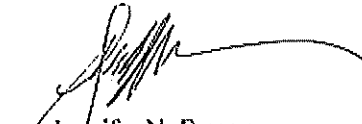
EXCUSED

John L. Valentine
Commission Chair


Rebecca L. Röckwell
Commissioner




Michael J. Cragun
Commissioner


Jennifer N. Fresques
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.

USTC – Appeal
Certificate of Mailing
Utah State Tax Commission

Gem Air LLC (Petitioner) vs Property Tax Division (Respondent)

22-1217

Gem Air LLC

31 Hamner Drive
Salmon,, ID 83467

Petitioner

Property Tax Division

Sent via Email

Respondent

****** CERTIFICATION ******

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

October 27th, 2022

Erin H. Jones

Date

Signature