

06-1647
Penalty & Interest
Signed 07/30/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	06-1647
v.)		
	)	Account No.	#####
TAXPAYER SERVICES DIVISION,	)	Tax Period:	06/05, 07/05, 08/05, 09/05, 05/06
UTAH STATE TAX COMMISSION,	)	Tax Type:	Penalty & Interest
)		
Respondent.	)	Presiding:	Jensen

Presiding:
Clinton Jensen, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE, President, PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE, from the Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on April 16, 2007. Petitioner is appealing penalties of \$\$\$\$ for the late filing and payment of withholding tax for the filing period of 06/05, 07/05, 08/05, 09/05, 05/06.

APPLICABLE LAW

The Tax Commission is granted the authority to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause. Utah Code Ann. §59-1-401(11).

DISCUSSION

Petitioner's representative explained that the late filed and paid withholding tax returns for the five monthly periods at issue stem from embezzlement by an accountant hired to perform payroll services for Petitioner. At hearing, Petitioner presented testimony regarding the embezzlement along with a signed promissory note in which the accountant admits to the facts of the embezzlement and promises to repay the

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amounts embezzled. Petitioner testified that the accountant was an employee of the firm that had provided payroll services to Petitioner for a long time. When the accountant started his own payroll services company, Petitioner employed the accountant as someone it had already worked with. The accountant not only embezzled funds from Petitioner, but also manipulated company accounts to prevent disclosure of his activities. In 2005, petitioner paid all withholding amounts but did so late. From Petitioner's review of company accounting records, Petitioner had determined that this allowed the accountant to buy time as he transferred money to himself. Petitioner discovered the embezzlement at about the time of the due date for the return and payment for the 05/06 period. This return and payment were late as a result of Petitioner firing its accountant and making investigation into the embezzlement. The embezzlement is currently the subject of a criminal proceeding in the Third District Court.

Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs/pub-17.pdf>, explains the factors that the Commission will consider in reviewing waiver requests. This publication discusses both employee embezzlement and reliance on a competent tax adviser as factors that can provide good cause for a waiver request. Respondent indicated that it waived penalties for periods 03/05, 04/05, and 05/05, but declined further waivers because at the time of its waiver decision, all of the evidence presented at hearing was not available to it.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the penalties associated with the 06/05, 07/05, 08/05, 09/05, and 05/06 tax periods amount of \$\$\$\$\$. 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

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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 appeal rights in this matter.

DATED this _____ day of _____, 2007.

Clinton Jensen
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice: If the Petitioner does not request a Formal Hearing within the thirty-days as discussed above, failure to pay the amount of deficiency that results from this order may result in an additional penalty.

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