

07-0357
Withholding Tax Penalty & Interest
Signed 08/27/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

TAXPAYER SERVICES DIVISION,
UTAH STATE TAX COMMISSION,

Respondent.

ORDER

Appeal No. 07-0357

Tax Type: Withholding Tax
Penalty & Interest

Account No. #####

Periods: 06/06, 09/06, and 10/06

Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, CPA, Power of Attorney

For Respondent: RESPONDENT REPRESENTATIVE, Compliance Agent, Taxpayer
Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on June 12, 2007. Respondent denied Petitioner's request to waive the penalty and interest. From that decision, Petitioner appeals to the Commission.

DISCUSSION

PETITIONER REPRESENTATIVE began working for Petitioner May of 2006. He mistakenly set Petitioner up for quarterly filing.

Petitioner had been a monthly filer before employing PETITIONER REPRESENTATIVE as its CPA. When PETITIONER REPRESENTATIVE began working for Petitioner, he advised

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Petitioner to file quarterly. Petitioner questioned that advice. PETITIONER REPRESENTATIVE continued to advise his client to file quarterly. Petitioner relied on that advice. The advice was erroneous. Once PETITIONER REPRESENTATIVE became aware of the need to file monthly, Petitioner has been 100% compliant.

At the hearing, Respondent stipulated that the October 2006 payment was timely. Respondent said it should have granted a waiver for that period in its Answer to Petition for Redetermination, but had not done so.

Of the reasons for waiver listed in Tax Commission Publication 17, reliance on a competent tax advisor is potentially applicable here. It states,

Reliance on a competent tax advisor: You fail to file after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised you a return was not required.

You are required, and have an obligation, to file; reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. You must demonstrate that ordinary business care, prudence were exercised in determining whether to seek further advice.

Petitioner's history is as follows. Petitioner was a quarterly filer. It filed late for July, August and September of 2004. It made no request for a waiver.

Petitioner was changed to a monthly filer in July of 2005. It was late in May of 2006. This was its first error since being changed to a monthly filer.

Petitioner's June 2006 return was not filed until January 2007. Respondent received a waiver request in March of 2007. It waived the penalty, but declined to waive the interest.

Petitioner's July 2006 return was not filed until January of 2007. However, Petitioner made a November 2006 payment. The funds from the November 2006 payment were transferred to

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August 2006, October 2006, and November 2006. No penalty was assessed. Interest was assessed. No waiver was processed.

Petitioner was late in filing its return for September of 2006. Respondent assessed a failure to file penalty of \$\$\$\$\$. Respondent declined to waive the penalty based on compliance history. Respondent also assessed interest.

Respondent initially assessed a penalty and interest for October of 2006. Payment posted timely, but the return was not filed until January of 2007. A failure to file penalty and interest were assessed. However, Respondent said that because the payment was posted timely, penalty and interest should be waived.

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(10).

DECISION AND ORDER

Based on the evidence presented, the Commission finds Petitioner has established reasonable cause in support of its request for a waiver of penalty in September of 2006, based on Petitioner's reliance on its tax advisor. The Commission also waives penalty and interest for October 2006, based on Respondent's statement that it should have granted a waiver for that period because of Petitioner's timely filing and payment, but had not done so. The Commission denies Petitioner's request to waive the interest for June, July, and September of 2006. Through no fault of the Commission, Petitioner had the time value of the money.

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

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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 appeal rights in this matter.

DATED this _____ day of _____, 2007.

R. Spencer Robinson
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

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