

04-1006
Audit
Signed 05/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	
v.)	Appeal No. 04-1006
)	Account No. #####
AUDITING DIVISION)	
OF THE UTAH STATE TAX)	Tax Type: Withholding
COMMISSION,)	Year: 2001
)	Judge: Robinson
Respondent.)	

Presiding:
 R. Spencer Robinson, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER REPRESENTATIVE 1 and PETITIONER
 REPRESENTATIVE 2
 For Respondent: RESPONDENT REPRESENTATIVE, from the Auditing 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 January 25, 2005. Petitioner paid \$\$\$\$\$, the amount of tax due. Petitioner requests a waiver of penalty and interest.

COMPANY provided payroll service to Petitioner. In 2002, it issued a W-2 form to (X), a corporate officer. The amount of withholding indicated on the W-2 form was not accurate. The tax withheld per Form TC-96R was \$\$\$\$\$. The tax reported per returns was \$\$\$\$\$. (X) filed his income tax returns based on the information in the W-2 form and received a refund.

No one associated with Petitioner caught the error. Petitioner learned of it on July 12, 2004, and tendered payment of \$\$\$\$\$, the additional tax due. Petitioner argues it did all it could to pay as required. It requests a waiver of the penalty and interest.

Respondent imposed a negligence penalty because the underpayment exceeded 40%. Respondent argued a simple reconciliation would have revealed the error. The penalty is \$\$\$\$\$.

Respondent declined to waive the interest, which was \$\$\$\$\$ on the date of the hearing. It said there was no Commission error.

APPLICABLE LAW

Utah Code Ann. §59-1-401 (11) states, “Upon 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.”

DECISION AND ORDER

Because the only evidence of negligence is the failure of Petitioner to reconcile, the Commission waives the penalty. However, Petitioner has had the time value of the amount due. Petitioner is responsible for payment of the interest. Petitioner’s request for a waiver of the penalty is granted. Petitioner’s request for a waiver of the interest is denied. 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 mailed to the address listed below and must include the

Appeal No. 04-1006

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 _____, 2005.

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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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