

04-1085
Penalty & Interest
Signed 05/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND FINAL DECISION
Petitioner,)	
)	Appeal No. 04-1085
v.)	Account No. #####
)	
TAXPAYER SERVICES DIVISION,)	Tax Type: Withholding Tax
)	
Respondent.)	Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Controller, PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Compliance Agent, Taxpayer
Services Division
RESPONDENT REPRESENTATIVE 3, Assistant Director, Taxpayer
Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 7, 2005. Petitioner requests a waiver of the penalty assessed by Respondent. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is withholding tax.
2. This matter is before the Utah State Tax Commission due to the Petitioner's request for a Formal Hearing filed on November 15, 2004. Petitioner requests a waiver of the

penalty assessed by Respondent for a late payment for January of 2004.

3. Petitioner presented a photocopy of the TC-96M, the coupon used to file monthly withholding taxes. PETITIONER REPRESENTATIVE made the photocopy. It shows Petitioner's account number, the tax period of January 2004, and the due date of March 1, 2004. These are preprinted on the coupon. PETITIONER REPRESENTATIVE signed the coupon, and wrote "3-1-04" on the coupon, as well as \$\$\$\$ as the amount withheld and remitted.

4. The coupon also shows the preprinted name and street address of the Tax Commission. Partially obscured are the city, state, and zip code. The photocopy shows a paperclip. One can see a line on the photocopy, consistent with something obscuring the lower portion of the coupon. PETITIONER REPRESENTATIVE acknowledged the flap of the envelope may have obscured the lower portion of the address when he made the photocopy.

5. After making the photocopy, PETITIONER REPRESENTATIVE put the coupon and check in the envelope. He then deposited the envelope in the mail. He does not know why the coupon and check did not reach the Tax Commission. He said the Postal Service could have lost it, someone at the Tax Commission could have misplaced it, or he could have inserted the coupon in backwards, thus preventing the address on the coupon from showing through the window in the envelope.

6. Petitioner did not receive the envelope by return mail. Respondent has no record of receiving the coupon and payment for January of 2004.

7. Petitioner has had eighteen delinquencies prior to this one during the preceding

three years. It has not asked for a waiver in any of those instances.

8. After being informed the January payment had not arrived, Petitioner sent a second check in the amount of \$\$\$\$\$. Respondent applied it first to the penalty and interest. The remaining amount due on the date of the hearing was \$\$\$\$\$.

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

The evidence does not establish Commission error. Though Petitioner originally based its request on an allegedly faulty coupon, the Commission finds the coupon was not faulty. The photocopy shows a paperclip holding something obscuring the lower portion of the address on the coupon. PETITIONER REPRESENTATIVE acknowledged it could have been the flap of the envelope he used to mail the coupon and check. PETITIONER REPRESENTATIVE also acknowledged he could have placed the coupon in the envelope backwards, thus preventing the address from showing through the window in the envelope. Petitioner has failed to establish reasonable cause supporting its request for a waiver of the penalty.

Based on the foregoing, the Utah State Tax Commission hereby denies Petitioner’s request to waive the penalty in this case. It is so ordered.

DATED this _____ day of _____, 2005.

Appeal No. 04-1085

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

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

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