

05-1183
Audit
Signed 04/06/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-1183
v.	)	Account No.	#####
AUDITING DIVISION OF)		
THE UTAH STATE TAX	)	Tax Type:	Withholding Tax
COMMISSION,	)	Tax Period:	2002
)		
Respondent.	)	Judge:	R. Spencer Robinson

Presiding:
R. Spencer Robinson, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE, via telephone
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 October 26, 2005.

On August 5, 2005, Respondent sent a statutory notice to Petitioner regarding an audit. The audit determined Petitioner had underpaid withholding tax in 2002. Petitioner paid \$\$\$\$\$, which covered the tax due (\$\$\$\$\$), penalty (\$\$\$\$\$), and interest (\$\$\$\$\$). Petitioner filed a timely request to waive penalty and interest.

For the 2002 tax year, Petitioner employed COMPANY to prepare and file its taxes and returns, including withholding tax. COMPANY was to prepare and file 4th quarter taxes. It did not do so. COMPANY is now a defendant in litigation that includes the Internal Revenue Service.

Petitioner hired a CPA to finalize the 2002 payroll, W-2's, and taxes. Some filings were duplicated because two parties were preparing and filing W-2's and W-3's. In November 2004 the CPA sent in corrected W-2's and W-3's, but failed to realize COMPANY had not paid the full amount of

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withholding tax in 2002. The first notice Petitioner had of the problem came from Respondent on June 27, 2005.

Petitioner does not dispute the tax is owed. Petitioner requests a waiver of the penalty and interest.

Respondent imposed the penalty because the account was 32% underpaid and for failure of the Petitioner to reconcile.

APPLICABLE LAW

§59-1-401. Offenses and penalties -- Rulemaking authority -- Statute of limitations -- Commission authority to waive, reduce, or compromise penalty or interest.

....

(5)(a) Additional penalties for underpayments of tax are as provided in Subsections (5)(a)(i) through (iv).

(i) Except as provided in Subsection (5)(c), if any underpayment of tax is due to negligence, the penalty is 10% of the underpayment.

§59-10-406. Collection and payment of tax.

....

(3)(a) Each employer shall file an annual return, in a form the commission prescribes, summarizing:

- (i) the total compensation paid;
- (ii) the federal income tax deducted and withheld; and
- (iii) the state tax deducted and withheld for each employee during the calendar year.

(b) This return shall be filed with the commission on or before February 28 of the year following that for which the report is made.

DECISION AND ORDER

Petitioner initially relied on COMPANY, a professional, to prepare and file its taxes. Subsequently, it relied on a CPA. Petitioner asserts COMPANY'S failure to discharge its obligation supports its request for a waiver of the penalty and interest.

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Respondent's position is that Petitioner should have discovered and corrected the error. Implicit in this argument is that duplicate filings of W-2's and W-3's was discovered and corrected, so the failure to pay the additional \$\$\$\$ should also have been discovered and corrected.

Respondent also argues that interest is generally not waived unless there is Commission error. In this case, there is no evidence of Commission error. Additionally, Petitioner had the time value of the money.

The Commission's authority to waive penalties is limited. It must find reasonable cause to waive the penalty. The Commission finds that the circumstances in this case do not rise to the level of reasonable cause to waive interest. Petitioner had the time value of the money. Commission error is not the cause of Petitioner having the money.

Petitioner is required under Section 59-10-406 to file reports concerning the amounts withheld for its employees, and to file annual reports showing the total amount of state tax withheld for such employees. These are to be reconciled. However, Petitioner relied on professionals to ensure compliance. The professionals erred.

Based on the foregoing, the Commission grants Petitioner's request for a waiver of the penalty. The Commission denies Petitioner's request for a waiver of interest. It is so ordered.

This decision does not limit either 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. A party disagreeing with this decision must request a Formal Hearing on its behalf to preserve its right to a Formal Hearing. Requests filed by an opposing party do not preserve the non-requesting party's right to a Formal Hearing. Requests for a Formal Hearing must include the appeal number, the opposing party's name and address, and shall be mailed to the address listed below:

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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 _____, 2006.

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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner