

05-1258
Audit
Signed 02/21/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-1258
)		
v.	)	Account No.	#####
)		
AUDITING DIVISION	)	Tax Type:	Withholding / Penalty & Interest
OF THE UTAH STATE)		
TAX COMMISSION,	)	Tax Periods:	01/01/2002 – 12/31/2003
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE

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 February 15, 2006.

On August 10, 2005, Auditing Division (“Division”) issued a Statutory Notice – Employee Withholding Tax to the Petitioner for the 2002 and 2003 calendar years in which it imposed additional tax and interest. It also imposed a 10% negligence penalty pursuant to the Petitioner’s failure to reconcile the tax it withheld during these years with its W-2 forms.

The Petitioner does not contest that it paid the state less withholding tax than it had withheld for payment and owes the tax assessment. However, the Petitioner explains that the underpayments were the result of the company bookkeeper embezzling from the company and filing

incorrect returns. Once the company became aware of her actions in 2004, the company filed charges against her and she has served time in jail for the offenses. PETITIONER REPRESENTATIVE also explains that the company has taken steps to pay those amounts owing to the federal and state governments because of this employee's actions. The Division confirms that the Petitioner has already paid over 90% of the withholding tax liability it assessed to it.

APPLICABLE LAW

The Utah Individual Income Tax Act provides, pursuant to UCA §59-10-406(1)(a), that “[e]ach employer shall . . . pay to the commission the amount required to be deducted and withheld from wages paid to any employee . . .” Subsection 59-10-406(2) provides that “[e]ach employer shall file a return, in a form the commission prescribes, with each payment of the amount deducted and withheld under this part showing: (a) the total amount of wages paid to his employees; (b) the amount of federal income tax deducted and withheld; (c) the amount of tax under this part deducted and withheld . . .” Furthermore, Subsection 406(3)(a) provides that “[e]ach 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.”

UCA §59-10-537(1) provides that “[i]f any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the rate and in the manner prescribed in Section 59-1-402 shall be paid. . . .”

UCA §59-10-539(1) provides for the imposition of penalty and interest, pertinent parts as follow:

.....

(2) If any part of any deficiency in tax imposed by this chapter, as defined by Section 59-10-523, is due to negligence or intentional disregard of rules, but without intent to defraud, a penalty shall be assessed, collected, and paid as provided in Section 59-1-401 in the same manner as if it were an underpayment.

.....

(8) In addition to the penalties added by this section, there shall be added to the tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments.

UCA §59-1-401(5)(a)(i) provides that “if any underpayment of tax is due to negligence, the penalty is 10% of the underpayment.”

UCA §59-1-402(5) provides that “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the tax commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.”

Furthermore, in those situations where penalty and interest have been properly imposed, 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).

DISCUSSION

The Petitioner does not contest that the 10% negligence penalty and interest were illegally imposed. The Petitioner only asks that they be waived due to the circumstances described

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earlier. Accordingly, the Commission considers the Division to have properly imposed both the interest assessment and the 10% negligence penalty.

The Commission is authorized under Section 59-1-401(10) to waive penalties and interest upon a showing of “reasonable cause.” The Commission has determined that reasonable cause to waive interest exists when a Tax Commission employee caused the error resulting in the accrual of interest. The circumstances that PETITIONER REPRESENTATIVE explained do not involve the error of a Tax Commission employee. Accordingly, the Commission finds no reasonable cause to waive interest in this matter.

However, reasonable cause to waive penalties is broader. The Commission often waives penalties associated with untimely filing of returns and payment of taxes upon a showing of employee embezzlement. Because the Petitioner is a relatively small company, the Commission considers it more plausible that the Petitioner’s bookkeeper could embezzle and hide the crime from the Petitioner than a similarly-principled bookkeeper could in a large company that had additional checks and balances in place to discover such actions. While the Petitioner’s failure to discover its employee’s actions sooner may be considered negligent, the Commission does not consider it grossly negligent under the circumstances. Accordingly, the Commission finds that, under the specific circumstances in this case, reasonable cause to waive the negligence penalty exists.

DECISION AND ORDER

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Based upon the foregoing, the Commission sustains the Division's assessment of additional withholding tax and interest. However, it waives the 10% negligence penalty based upon its finding of reasonable cause to do so. 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 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 _____, 2006.

Kerry R. Chapman
Administrative Law Judge

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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

Notice: If a Formal Hearing is not requested as discussed above, failure to pay any balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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