

05-1413
Audit
Signed 12/16/2005

BEFORE THE UTAH STATE TAX COMMISSION

| | | | |
|-------------------|---|--------------|----------------------------------|
| PETITIONER, |) | ORDER | |
| |) | | |
| Petitioner, |) | Appeal No. | 05-1413 |
| |) | | |
| v. |) | Account No. | ##### |
| |) | | |
| AUDITING DIVISION |) | Tax Type: | Withholding / Penalty & Interest |
| OF THE UTAH STATE |) | | |
| TAX COMMISSION, |) | Tax Periods: | 2002 & 2003 |
| |) | | |
| Respondent. |) | Judge: | Chapman |

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, COMPANY, 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 on December 12, 2005.

PETITIONER, the Petitioner, has contracted with COMPANY for a number of years to file its returns and make its tax payments relating to its employee payroll issues. In mid-2002, the Petitioner changed its name and tax ID numbers, but COMPANY failed to process the change properly in its systems. As a result, COMPANY failed to pay the Utah withholding tax that the Petitioner owed for the latter half of 2002 and all of 2003. For these reasons, the Division issued its Statutory Notice – Employee Withholding Tax on August 29, 2005, in which it imposed the

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withholding tax that had not been paid, a 10% negligence penalty for failure to reconcile its W-2 payments with its annual withholding tax report, and interest.

On behalf of the Petitioner, COMPANY requests that the Commission waive the penalties and interest associated with the assessment because it, not the Petitioner, was at fault for failing to remit the Petitioner's withholding tax and reconciling its W-2 withholdings with its annual reports. COMPANY states, however, that while it files all of these documents on the Petitioner's behalf, it does not have the capacity to check each of its client's filings to discover when its annual payments on a client's behalf do not match the amounts withheld on that client's W-2 reports. For these reasons and because COMPANY would be liable for any deficiency, it asks the Commission to waive the penalties and interest associated with the assessment.

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 §59-10-539(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

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At issue is the assessment of the 10% negligence penalty and interest. Concerning the penalty, the Petitioner is required under Section 59-10-406 not only to file reports concerning the amounts withheld for its employees, but also an annual report showing the total amount of state tax withheld for such employees. The Commission finds it negligent for a taxpayer not to reconcile these payments and make adjustments, if mistakes have been made. Nor does the Commission find it excusable for a professional payroll company to admittedly forego such reconciliation on its client's behalf. Accordingly, the Commission finds that the failure to reconcile these reports was negligence and that the Division properly imposed a 10% negligence penalty for the violations of Utah law that occurred. Furthermore, the Commission finds that the Division properly imposed interest in accordance with Utah law.

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 interest. COMPANY, not a Tax Commission employee, caused the errors in this matter. Accordingly, the Commission finds no reasonable cause to waive interest in this matter. Furthermore, although there is no evidence to suggest that this error has occurred prior to the tax years at issue, the Commission is reluctant to find reasonable cause to waive the 10% negligence penalty because of COMPANY'S admittance that it has always failed and will continue to fail to reconcile the reports that are due under Utah law for its Utah clients. For this reason, the Commission declines to waive the negligence penalty. As a result, the Commission sustains the Division's assessment in whole.

DECISION AND ORDER

Based upon the foregoing, the Commission finds the penalty and interest assessed for the two tax years at issue were properly imposed and finds no reasonable cause to waive either assessment. Accordingly, the Petitioner's appeal is denied and the Division's assessment is sustained. 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 _____, 2005.

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 _____, 2005.

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 the 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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