

05-1446
Penalty & Interest
Signed 02/15/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-1446
v.)		
	)	Account No.	#####
TAXPAYER SERVICES DIVISION,	)	Tax Period.	12/04
UTAH STATE TAX COMMISSION,	)	Tax Type:	Penalty & Interest
)		
Respondent.	)	Presiding:	Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE, Waivers Unit, Taxpayer Services
Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on November 20, 2006.

APPLICABLE LAW

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(11).

DISCUSSION

Petitioner is appealing a penalty assessed for the late payment of sales tax for the December 2004 tax period.

Petitioner's representative, PETITIONER REPRESENTATIVE explained that on January 31, 2005, the due date for the tax payment in question, an employee of the Petitioner prepared a return showing an incorrect amount. PETITIONER REPRESENTATIVE re-calculated the return and gave it back to the employee to file. The employee made the payment for the return and reported to PETITIONER REPRESENTATIVE that the payment had been timely. However, PETITIONER REPRESENTATIVE later learned that the payment was not timely because it was made after the cut-off time for payment, which was 3:00 p.m. Mountain Time (5:00 p.m. Eastern Time).

The Division representative reviewed payment records and confirmed that the payment in question was received at 4:27 p.m. Mountain Time (6:27 p.m. Eastern Time) and was thus after the cut off time for payments. As of January 2005, the cut-off had been in place for a long time and was thus not a new development. The Division representative indicated that the Division will waive penalties in some instances, but that the reasons provided for a waiver request did not warrant a waiver.

Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs/pub-17.pdf>, explains the factors that the Commission will consider in reviewing waiver requests. Of the several circumstances listed for waiver of penalties, none describe a situation such as that presented here. The closest reason for waiving a penalty in this case would be either a change in tax law or a new filer who might be unfamiliar with filing taxes. However the evidence is that the Petitioner has been filing taxes for some time and, in fact, was late on several previous payments and had received

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waivers on those late payments. Thus, the circumstances of this case and the filing history do not support a waiver of penalties.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the penalty associated with the Petitioner's sales tax return for December 2004. 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 _____, 2007.

Clinton Jensen
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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice: If the Petitioner does not request a Formal Hearing within the thirty-days as discussed above, failure to pay the amount of deficiency that results from this order may result in an additional penalty.

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