

05-1521
Audit
Signed 06/12/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 05-1521
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, Registered Agent
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 2, 2006.

On October 7, 2005, Respondent sent a statutory notice to Petitioner regarding an audit. The audit determined Petitioner had underpaid withholding tax in 2002. The tax withheld per Form TC-96R was \$\$\$\$\$. The tax reported on returns was \$\$\$\$\$. The additional tax due was \$\$\$\$\$. Respondent also assessed a penalty in the amount of \$\$\$\$\$ and interest in the amount of \$\$\$\$\$ as of February 28, 2003. Petitioner did not dispute the tax owed, but requested a waiver of penalty and interest. Respondent denied the request. 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. Petitioner turned over funds to COMPANY, which was to

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issue checks to employees and to file and pay taxes. COMPANY issued quarterly statements to Petitioner showing it had filed and paid all taxes. These representations proved false. COMPANY is now a defendant in litigation.

COMPANY'S actions forced Petitioner out of business in 2003. Petitioner filed its returns for 2003. Most business assets were sold to pay remaining debts and payroll. Petitioner did not seek protection in bankruptcy court.

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 more than 50% 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.

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(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. Petitioner asserts COMPANY'S failure to discharge its obligation supports Petitioner's request for a waiver of the penalty and interest.

Respondent's position is that Petitioner should have discovered and corrected the error. Respondent also argues that interest is generally not waived unless there is Commission error. In this case, there is no evidence of Commission error.

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, at best, 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

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appeal number, the opposing party's name and address, and shall be mailed to the address listed below:

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. If Petitioner decides not to request a Formal Hearing, it may contact the Taxpayer Services Division regarding an offer in compromise or a payment schedule.

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