

05-1532  
Audit  
Signed 03/27/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No. 05-1532
v.	)	
	)	Account No. #####
AUDITING DIVISION,	)	
UTAH STATE TAX COMMISSION,	)	Tax Type: Withholding Tax /
	)	Penalty & Interest
Respondent.	)	Presiding: Jensen

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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE 1, from the Auditing Division  
RESPONDENT REPRESENTATIVE 2, from the Auditing 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 January 19, 2006. The Petitioner requested reconsideration of a decision by the Auditing Division (the "Division") denying waiver of penalties and interest for tax years 2002 and 2003. The Petitioner does not dispute the taxes themselves, but does request relief from penalties and interest associated with failure to reconcile withholding taxes and for late payments.

The Petitioner explained that for tax years 2002 and 2003, they had engaged COMPANY A to handle withholding taxes. The arrangement between the Petitioner and

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COMPANY A was that COMPANY A would prepare the tax filing and send a payment request to the Petitioner. As soon as COMPANY A received payment from the Petitioner, COMPANY A was to remit tax funds to the appropriate governmental entities. In 2002 and 2003, COMPANY A apparently requested money from the Petitioner, which the Petitioner paid. But, COMPANY A failed to pay any of the governmental entities. The Petitioner's representative indicated that COMPANY A defrauded many businesses in this manner and the Petitioner lost approximately \$\$\$\$\$ to COMPANY A. The Petitioner may or may not see any recovery from COMPANY A given the number of claimants and COMPANY A's now-defunct status.

The Division representative provided information regarding the Petitioner's filing history. Before 2002, the Petitioner employed COMPANY B to provide payroll services. After 2003, the Petitioner made employee-leasing arrangements with COMPANY C. Both of these arrangements have worked well. The Petitioner acknowledged that in the distant past there were issues with withholding taxes and that this was the reason for hiring payroll service or employee leasing companies to provide payroll services. The Division agreed that the Petitioner's actions did not evidence an intent to evade taxes but may have showed a lack of ordinary business care in failing to more closely oversee the actions of COMPANY A.

#### 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

The Petitioner agrees that the assessment imposed by the Division is correct, but due to the issues involving COMPANY A, asks the Commission for relief from penalties and interest. While the Commission does not have authority to waive legally due income tax, it does have authority to waive penalties and interest “upon reasonable cause shown,” pursuant to Utah Code Ann. §59-1-401(11).

“Reasonable cause” to waive interest is limited to circumstances where the Commission contributed to the delinquency at issue. Because the Commission was not responsible for the income tax delinquencies, sufficient reasonable cause to waive the interest in this matter does not exist. Waiver of penalties, however, is appropriate not only when the Commission has made an error but also other reasons, such as employee embezzlement or reliance on competent tax advice. See Tax Commission Publication 17, Waivers – Reasonable Cause (revised 04/04).

The facts presented by the petitioner support a waiver of penalties for 2002 and 2003. The Petitioner relied on tax advice and hired an adviser that appeared to be competent. That tax adviser then took tax payments for taxes and converted those payments for its own purposes. While this is not exactly employee embezzlement, the results in this case are even more closely tied to the reason Petitioner did not properly forward 2002 and 2003 withholding taxes.

The Division is correct in stating that a taxpayer should not receive a waiver of penalties if the taxpayer could have avoided the problem through the exercise of reasonable business judgment. But the facts in this case show that the Petitioner had turned matters over to COMPANY A for the very reason of avoiding dealing with the intricacies of withholding tax. It also appears that

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COMPANY A went out of its way to conceal its fraudulent practices. That COMPANY A was able to defraud many companies in addition to the Petitioner supports the view that COMPANY A defrauded the Petitioner notwithstanding reasonable business care and oversight by the Petitioner.

DECISION AND ORDER

Although the Division's assessment is correct, the Petitioner has shown sufficient reasonable cause for the Commission to waive the penalties at issue. For this reason, the Commission waives the penalties assessed by the Division, but sustains the Division's assessment of additional tax and interest. 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.

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Clinton D. 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 \_\_\_\_\_, 2006.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
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.