

05-1587  
Sales Tax Penalties and Interest  
Signed 05/30/2007

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER 1, dba	)	<b>FINDINGS OF FACT,</b>
PETITIONER 2,	)	<b>CONCLUSIONS OF LAW,</b>
	)	<b>AND FINAL DECISION</b>
Petitioner,	)	
	)	
v.	)	
	)	Appeal No.    05-1587
TAXPAYER SERVICES DIVISION OF THE	)	Account No.    #####
UTAH STATE TAX COMMISSION,	)	Tax Periods:  2000-2004
	)	Tax Type:     Sales Tax
Respondent.	)	Penalties and Interest
	)	Judge:        Phan

---

**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER REPRESENTATIVE, Attorney at Law  
                    PETITIONER 1  
For Respondent:    RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
                    RESPONDENT REPRESENTATIVE 2, Manager OIC Waiver Unit  
                    RESPONDENT REPRESENTATIVE 3, Tax Compliance Agent

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 18, 2007. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1.    Petitioner is appealing the assessment of failure to pay and failure to file penalties relating to Petitioner's sales tax for the periods from January 1, 2000 through December 31 2004. Petitioner was an annual filer during these periods at issue with the tax returns being due on January 31, of the following year.

2.    Both 10% failure to file and 10% failure to pay penalties were assessed for the periods 2000 through 2003. For 2004 a partial payment had been made timely. Both the 10% late payment and 10%

late filing penalties were assessed based on the portion of the balance that was not paid timely. Additionally, \$\$\$\$ in legal fees was assessed for each period. The total amount of the penalties for each year are as follows:

Year	Penalties
2000	\$\$\$\$
2001	\$\$\$\$
2002	\$\$\$\$
2003	\$\$\$\$
2004	\$\$\$\$

3. Interest was assessed from the date that the taxes were due until the amount of the deficiency will be paid in full.

4. Petitioner asks that the penalties be waived for all periods at issue based on a totality of medical circumstances surrounding Petitioner and his family members over this period of time. Based on the totality of circumstances argument, it was Petitioner's contention that he need not show that there was a specific medical emergency on each of the filing dates and he did not provide a timeline or specific dates for all occurrences noted.

5. Factors Petitioner pointed to as causing his inability to file the returns began in the late 1990's, prior to the period at issue, and prior to Petitioner's opening up the business. In 1992 he had been diagnosed with Type II diabetes. He also had high-blood pressure and hypertension, but it is unclear when this was diagnosed. Then his in-laws, who were elderly, started needing care from Petitioner and PETITIONER REPRESENTATIVE, who was his spouse. Both in-laws eventually died in the late 1990's.

6. Petitioner indicates that he opened the antiques store in 1999. He had been working full time as an employee for another company. It was his intent to continue working full time for the other company and operate his store as a second job. The shop was open 10:00 to 6:00 on weekdays. He planned to have an employee work at his store during the weekdays, and he and PETITIONER REPRESENTATIVE

would work at the store on the weekends and perform bookkeeping functions.

7. In 2001, possibly February or March of that year, Petitioner was diagnosed and treated for malignant melanoma. He also was referred to an orthopedic specialist for a consultation regarding his knee.

8. On March 13, 2002, Petitioner had quadruple coronary bypass surgery. He indicates that he had been having symptoms prior to the surgery, possibly as much as two months prior. However, he had been well enough to work his full time job during 2002 up to near the date of the surgery as well as manage the store. After the surgery, there was a complication with a bleeding ulcer and he was re-hospitalized. Petitioner had to take medical leave from his other full time employment for approximately three months of rehabilitation. Petitioner did return to his other employment later in 2002. Also during that year, the testimony being somewhat vague as to when this occurred, Petitioner's granddaughter was diagnosed with an untreatable brain tumor. This may have occurred between Thanksgiving and Christmas of 2002.

9. In the late spring or early summer of 2003, Petitioner had started to feel ill again and was diagnosed with gallstones and had his gall bladder removed. Then Petitioner was terminated from his full time employment. Petitioner has attempted to find employment but has been unable to do so, other than continue the management of the shop. In September 2003, PETITIONER REPRESENTATIVE became ill and had emergency surgery and a follow up surgery in December 2003, which required six weeks of recovery.

10. In 2004 Petitioner became insulin dependent and reported to his doctor being moderately depressed.

11. Through all this period Petitioner continued to manage the business and keep the shop open. This would require his paying other business obligations and making bank deposits. Additionally there is no indication that he had not collected the tax from his customers. The Commission notes that in addition, Petitioner was working full time at his other employment until approximately March of 2002 and then again the later part of 2002 and into 2003 until he was terminated from his other employment.

12. Respondent's representatives did attempt to contact the business about unpaid taxes. From 2002 until 2004 the representatives were told to contact PETITIONER REPRESENTATIVE or the contacts were with PETITIONER REPRESENTATIVE. In 2004 a representative for Respondent did reach Petitioner, but he referred them to PETITIONER REPRESENTATIVE. Finally in 2005, Petitioner did start to respond to the requests by filing returns and making payments toward the delinquent taxes. The returns for all periods at issue were filed on July 5, 2005.

#### APPLICABLE LAW

Upon making a record of its actions, and upon reasonable cause shown, the Commission may waive, reduce, or compromise any of the penalties or interest imposed under this part. Utah Code Ann. §59-1-401(11).

#### CONCLUSIONS OF LAW

1. The Commission has found that the death or serious illness of the taxpayer or an immediate family member may be reasonable cause for waiver of penalties. However, this is limited, as indicated in Utah State Tax Commission, Publication 17, to situations where the death or illness "occurred on or immediately prior to the due date of the return." Certainly waiver should be considered if the taxpayer is prevented from filing timely because of a serious medical emergency that had occurred to him or her or their spouse or child on or just prior to the due date of a return. However, in making its determination regarding waiver of penalties, the Tax Commission would also take into consideration if the taxpayer then filed the return within a reasonable time, taking into account the seriousness of the medical issues. The one year at issue in this matter where Petitioner has shown there was a serious medical event near the due date of the return was tax year 2003 when PETITIONER REPRESENTATIVE had surgery sometime in December and had a six week recovery period. However, the Commission does not have a specific date or event. Additionally this was not an unforeseen event. This was more of a scheduled surgery, a follow-up to an emergency surgery that

Appeal No. 05-1587

occurred in September. It was clear she was not in the hospital on January 31, 2004 when the return was due. Additionally, this return was not filed within a reasonable time after the due date. It was filed July 5, 2005.

2. Petitioner does not rely on the published standard for waiver involving serious medical issues that occurred on or immediately prior to the due date of the return. Petitioner argues instead that the Commission should consider the totality of medical issues of the taxpayer and immediate family members and apply that to waive late penalties over the five-year period. Based on this position, Petitioner argues that it need not show that any of the specific medical events occurred near the due date of the return. Apparently in reliance on this position Petitioner did not present specific information supporting the dates of all the medical occurrences and even when questioned directly was not always able to give a date. The Tax Commission declines to adopt Petitioner's position in this case. Petitioner did not file or pay sales tax as it became due over a five-year period, indicating a number of health issues with Petitioner, his spouse and granddaughter. The Commission recognizes that these were difficult medical issues, although Petitioner had some of these conditions when he started the business. The Commission does not accept the totality of medical issues argument because despite the medical issues, Petitioner continued to keep the business open and operating which would require paying other obligations. He even worked another full time job in addition. Petitioner continued to collect sales tax from his customers and retain those funds. If he remained able to do this, he was able to file returns as they became due or at least in a reasonable time from the due date. This account indicates a pattern of giving sales tax payment low priority and there is no basis for waiver of any of these periods.

3. Interest is assessed pursuant to Utah Code Sec. 59-1-402 to compensate the state for the time value of money from when the tax was due to when it was finally paid. For this reason cause for waiver of interest is more stringent. Interest is generally waived only in the event an error on the part of the Tax Commission or Tax Commission employee resulted in the late payment or underpayment. There was no

Appeal No. 05-1587

indication of that type of error in this matter.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that sufficient cause has not been shown to justify a waiver of the failure to file or failure to pay penalties for the filing periods of 2000 through 2004, nor is their cause for waiver of the interest. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Jane Phan  
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 \_\_\_\_\_, 2007.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice of Appeal Rights & Payment:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 et seq. and 63-46b-13 et. seq. If you fail to pay the balance due resulting from this decision within thirty days from the date of this order, an additional penalty may be assessed.

Appeal No. 05-1587

*JKP/05-1587.fof*