

06-0448  
Penalty & Interest  
Signed 01/11/2007

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No. 06-0448
v.	)	
	)	Account No. #####
TAXPAYER SERVICES DIVISION,	)	
UTAH STATE TAX COMMISSION,	)	Tax Type: Penalty & Interest
	)	
Respondent.	)	Presiding: Jensen

---

**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE, President, PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, 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 July 18, 2006. Petitioner is appealing penalties and interest of assessed for the late payment and filing of the Petitioner's corporate franchise tax return for the 2004 tax year.

Petitioner's representative explained that the Petitioner's CPA advised the Petitioner that no taxes were due for the 2004 tax year. The basis for the CPA's advice was a net operating loss of \$\$\$\$\$ sustained by the Petitioner's parent company. The Petitioner has now determined that this advice was incorrect because the Petitioner does not get the benefit of consolidating with its parent's offsetting loss. Although the Petitioner does not dispute the taxes themselves, the Petitioner does

request relief from penalties and interest associated with the 2004 tax year.

The Respondent denied waiver of penalties and interest for two reasons. First, the Petitioner had been late filing its 2002 and 2003 tax returns. The late filings for these years were technical violations only, but nevertheless took the matter out of the guidelines for granting of a waiver at the Division level. Further, at the Division level, the Petitioner had not provided sufficient information to show good cause for a penalty waiver.

#### 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

Utah Tax Commission Publication 17, available in an online format at <http://tax.utah.gov/forms/pubs/pub-17.pdf>, provides greater detail on circumstances that qualify as good cause to support a waiver of penalties and interest. A taxpayer's reliance on a competent tax adviser can form the basis for a penalty waiver. Publication 17 also explains that the Commission will consider a taxpayer's compliance history in reviewing a waiver request.

Reviewing the facts in this matter, the Division has presented evidence of two prior late filings. While the Division was correct in denying waiver under its guidelines, the prior late filings are technical in nature and not so egregious as to rule out waiver by the Commission if there is otherwise good cause for a waiver. The Petitioner's reliance on a CPA appears to be the cause of the late filing for the 2004 tax year. It was reasonable for the Petitioner to rely on its CPA because the CPA's mistake was on a tax decision for which business owners would normally rely on a tax adviser.

Tax Commission Publication 17 explains that the standard for waiving interest on taxes is more stringent than for waiving penalties. Generally, to provide good cause to waive interest, a taxpayer must show error by a Tax Commission employee. In this case, there was no evidence of Tax Commission employee error and thus no good cause to waive interest.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the imposition of interest but finds that sufficient cause has been shown to justify a waiver of penalties associates with the Petitioner's corporate franchise taxes for tax year 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 \_\_\_\_\_, 2006.

---

Clinton Jensen  
Administrative Law Judge

Appeal No. 06-0448

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

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.

CDJ/06-0448.p&i.int