

06-0568
Penalty & Interest
Signed 02/13/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 06-0568
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

For Respondent: RESPONDENT REPRESENTATIVE, from the 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 16, 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 penalties assessed for the late payment and filing of sales tax for the first two quarters of 2005.

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Petitioner's representative, PETITIONER REPRESENTATIVE, explained that his is a small company in which he was the sole person with responsibility for and knowledge to handle accounting matters including the filing of file tax returns. This was not a problem until 2003 when PETITIONER REPRESENTATIVE began to experience failing health. Throughout the remainder of 2003 and well into 2005, PETITIONER REPRESENTATIVE underwent major surgeries and spent a great deal of time incapacitated or hospitalized. He tried to bring someone into the business to handle accounting functions, but the person hired lacked experience and was unable to correct the tax problems. In November 2005, PETITIONER REPRESENTATIVE followed his doctors' suggestions to close his businesses to limit stress for the sake of his health. During this time of failing health, the Petitioner was late in filing or paying most if not all of the quarterly sales tax returns for the last two quarters of 2003, all of 2004, and the first two quarters of 2005. The Petitioner does not dispute the taxes themselves or interest on those taxes and is not asking for penalty waivers for any of these periods except the first two quarters of 2005.

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. Serious illness can, under some circumstances be good cause for granting a waiver request. Generally, the illness must coincide with the time the tax is due and the inability to file must occur in spite of reasonable efforts to make payment under the circumstances. Publication 17 also explains that the Commission will consider a taxpayer's compliance history in making a decision on a waiver.

In this matter, the Petitioner's pre-2005 compliance history has several consecutive late filings. In fact, the Division initially denied waiver on the basis of a poor compliance record.

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However, at hearing, the Petitioner's representative was able to explain and provide support for the assertion that the health problems causing the waiver request were the same problems causing the 2005 late filings at issue in this matter. In fact, the compliance history up until PETITIONER REPRESENTATIVE'S health began to fail in 2003 was good. The detailed health history provided at hearing supports a waiver of penalties for the three periods on the basis of serious health problems occurring at the time of tax filings. The Petitioner made reasonable attempts to continue filing taxes in spite of those health problems. This appears to be a case in which all aspects of the business failed rather than an attempt to favor other creditors over the State of Utah.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the penalties associated with the sales tax returns for the first two quarters of 2005. 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

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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

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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