

06-0672  
Penalty & Interest  
Signed 02/15/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	06-0672
v.	)		
	)	Account No.	#####
TAXPAYER SERVICES DIVISION,	)		
UTAH STATE TAX COMMISSION,	)	Tax Type:	Penalty & Interest
	)		
Respondent.	)	Presiding:	Jensen

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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE, Waivers Unit, 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 August 15, 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 monthly sales tax of tax returns for May 2004, November 2004, December 2004, January 2005, February 2005, March 2005, August 2005, September 2005, and November 2005.

Petitioner's representative explained that the late filing and payment resulted from illness problems with the Petitioner's employee responsible for the filing and payment of the Utah sales tax returns. The employee's illness had elements of behavioral and emotional issues that caused the employee to attempt to conceal the unpaid taxes from the Petitioner and to be less than candid in responding to inquiries regarding the Utah tax payments and returns. The Petitioner's representative explained that detecting the tax payment problems was made more difficult by periods in which the employee was able to function normally as is demonstrated by periods of timely filings between the months with problems. Further, the Petitioner's employee responsible for tax filings had been on the job a long time and had functioned well as is evidenced by a nearly-perfect compliance history before the periods in question.

Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs/pub-17.pdf>, sets forth the factors that the Commission will consider in reviewing waiver requests. This publication lists serious illness and employee dishonesty as factors that can lead to a waiver of penalties. Publication 17 discusses the necessary oversight necessary when hiring others to assume tax preparation or payment obligations and that the Commission will consider compliance history when ruling on waiver requests.

Reviewing the evidence in this matter, it appears that illness was the cause of the Petitioner's late filing and payments for the periods at issue. It further appears that the employee responsible for tax filings took affirmative steps to conceal the tax problems and that this made discovery of the delinquent filings difficult, notwithstanding reasonable business oversight. Finally, while there were a few filing difficulties in the Petitioner's compliance history that took this matter

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out of the discretion granted the Division to grant waivers, the few delinquencies showing in the Petitioner's filing history are technical only and thus compliance history supports a waiver of penalties.

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 May 2004, November 2004, December 2004, January 2005, February 2005, March 2005, August 2005, September 2005, and November 2005 tax periods. 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 \_\_\_\_\_, 2007.

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Clinton 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 \_\_\_\_\_, 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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