

06-1037  
Penalty & Interest  
Signed 01/09/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No. 06-1037
v.	)	
	)	Account No. #####
TAXPAYER SERVICES DIVISION,	)	Tax Type: Withholding Tax
UTAH STATE TAX COMMISSION,	)	Penalty & Interest
	)	Tax Period: Multiple
Respondent.	)	
	)	Presiding: Robinson

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**Presiding:**

R. Spencer Robinson, 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 on October 3, 2006 in accordance with Utah Code Ann. §59-1-502.5. The Petitioner appealed a decision by the Taxpayer Services Division (the "Division") denying waiver of penalties. The Division waived penalties for February, March and October of 2005. The Division declined to waive penalties for the remaining periods, from December of 2004 through February of 2006. As of June 26, 2006, penalties were \$\$\$\$\$.

The Petitioner does not dispute taxes themselves, or the interest assessed, but does request relief from the penalties associated with late filing and late payments. Petitioner provides a unique product, cameras capable of capturing images at one million

frames per second. As a basis for its waiver request, the Petitioner cited two factors. One is the cost of making the transition from film to digital imaging. Research and development costs were substantial. Another is a decrease in federal spending and export restrictions. Following the events of September 11, 2001, changes in federal spending had an effect on Petitioner's business. Additionally, the federal government modified restrictions placed on the export of Petitioner's technology. Petitioner is the only domestic producer of its product. Foreign competitors were not similarly restricted.

Petitioner's request is based on its performance prior to December of 2004, and the economic difficulties it endured. It pointed out that withholding taxes were not the only thing paid late. Payroll was also sometimes late. Loyal employees withstood this. Vendors and banks were unpaid for a time. Petitioner is now in a more stable economic state.

Petitioner asks that the penalties be waived under the category of other extraordinary circumstances. The Division argues Petitioner is asking for a waiver based on economic hardship.

The Division reviewed Petitioner's compliance history. There were delinquencies in December 2004, January 2005, (February and March of 2005, for which the Division granted waivers,) April 2005, May 2005, June 2005, July 2005, (October 2005, for which the Division granted a waiver,) November 2005, December 2005, January of 2006, and February of 2006. Applying its guidelines, the Division declined to grant additional waivers. It considers the request for additional waivers as based on economic hardship, which it maintains is not reasonable cause for granting waivers. The

Division argues the Petitioner's circumstances are not the "other clearly supported extraordinary and unanticipated reasons" discussed in Publication 17.

#### 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 State Tax Commission Publication 17, available in written format from the Commission, or online at <http://www.tax.utah.gov/forms/pubs/pub-17.pdf>, provides information and general guidance regarding waivers of penalties on state taxes. Financial difficulties are generally not a reason to waive penalties.

Petitioner received three waivers for the periods at issue. The reasons for the late payments in these periods are not of the same character as those described in Publication 17. Rather, they are attributable to cash flow difficulties.

#### DECISION AND ORDER

Based upon the foregoing, the Commission finds Petitioner has not established reasonable cause for a waiver of penalties in this case. The Commission sustains the Division's assessment of penalties. 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.

\_\_\_\_\_  
R. Spencer Robinson  
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.