

06-1053  
Penalty & Interest  
Signed 01/09/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	06-1053
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, 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 and interest. The Division waived penalties for May, June and July of 2005. The Division declined to waive penalties for the remaining periods, from August of 2005 through December of 2005. As of July 18, 2006, penalties were \$\$\$\$\$. The Division did not waive interest, which, as of July 18, 2006, was \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-1-401 (1) (a) "The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return."

Utah Code Ann. §59-1-401 (2) "The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:

....

(b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);

Utah Code Ann. §59-1-401(11) “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. §59-1-402.

(2) Except as otherwise provided for by law, the interest rate for a calendar year for all taxes and fees administered by the commission shall be calculated based on the federal short-term rate determined by the Secretary of the Treasury under Section 6621, Internal Revenue Code, and in effect for the preceding fourth calendar quarter.

(5) Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

#### DISCUSSION

Petitioner opened its withholding account in May of 2005. It contracted with COMPANY A to file its withholding tax returns and remit withholding taxes. Each month, COMPANY A sent Petitioner an invoice stating the amount of withholding. The invoice also contained a field designated “debit advice.” In this field, the invoice read, “Please do not pay this bill. The total due of (the amount for the period was inserted) will be deducted from your account #(account number partially displayed) on (date inserted.)”

COMPANY A debited Petitioner’s account in accordance with the amounts stated on the invoices. Petitioner has employees in several states. The invoices contain the total amount of withholding taxes for all employees. They do not break down withholding taxes by state.

COMPANY A also sent Petitioner a Reconciliation, TC-96R, for the tax period Jan-Dec 2005. It showed a total of \$\$\$\$\$ total Utah tax as reported on periodic returns. Based on the documents it received, and the debiting of its account, Petitioner would reasonably infer

that COMPANY A was filing Utah returns and paying Utah withholding taxes. Ordinary business care would not dictate additional inquiry.

The Division's initial contact with Petitioner was in January of 2006. By May of 2006, Petitioner had filed all returns and paid the taxes due.

Petitioner requests a waiver of the penalties because it relied upon COMPANY A, a professional service company that collects and pays taxes for its clients, and files tax returns. Petitioner contends its reliance on COMPANY A was reliance on a competent tax advisor as set forth in Publication 17.

As indicated above, the Division granted waivers for the first three periods, May, June, and July of 2005. Applying its guidelines, the Division declined to grant additional waivers.

The Commission did not have the time value of the money it should have received with timely filed withholding tax returns. Absent action by the Commission causing the error, interest is generally not waived.

#### DECISION AND ORDER

Based upon the foregoing, the Commission finds Petitioner has established reasonable cause for a waiver of penalties in this case. The Commission grants Petitioner's request for a waiver of penalties.

There is no Commission error contributing to the failure to timely file and pay the withholding returns. The Commission sustains the Division's assessment of interest. 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

Appeal No. 06-1053

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.