

06-1104  
Conservation Tax  
Signed 05/18/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>INITIAL HEARING ORDER</b>
Petitioner,	)	
	)	Appeal No.    06-1104
v.	)	Account No.   #####
	)	
AUDITING DIVISION OF THE	)	Tax Type:      Conservation Tax
UTAH STATE TAX COMMISSION,	)	Audit Period:  01/98 – 12/05
	)	
Respondent.	)	Judge:        Robinson

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**Presiding:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER, *pro se*, by telephone  
                    PETITIONER REPRESENTATIVE  
For Respondent:    RESPONDENT REPRESENTATIVE 1, Assistant Division Director  
                    RESPONDENT REPRESENTATIVE 2, Audit Manager

STATEMENT OF THE CASE

On July 28, 2006, Respondent sent Petitioner a Statutory Notice – Conservation Fee. Petitioner responded on August 15, 2006 by filing a Petition for Redetermination. The parties participated in an Initial Hearing on October 31, 2006. At issue is Petitioner’s request for a waiver of the 10% failure to file and 10% failure to pay penalties sought by the Respondent.

APPLICABLE LAW

Utah Code Ann. Sec. 59-1-401. Offenses and penalties - Rulemaking authority - Statute of limitations - Commission authority to waive, reduce, or compromise penalty or interest.

(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.

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(2) The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:

(a) failure to pay any tax, as reported on a timely filed return;

Utah Code Ann. Sec. 59-1-401(11) Waiver.

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.

DISCUSSION

The facts, acknowledged by Petitioner, are that he did not file returns as required, or submit the required payments. He has been in business since 1956. He does not recall receiving any forms associated with the conservation tax. In 1991 he had a vision problem and is now legally blind. Petitioner has paid the taxes of \$\$\$\$\$. Penalties are \$\$\$\$\$. He requests a ruling in favor of his waiver requests based on his past compliance history of 35 years.

Respondent took the position that penalty and interest are in statute. The returns were not filed. The tax was not timely paid. The penalties are fixed by statute. Respondent asked the penalties and interest be sustained.

Penalties exist to encourage compliance. In other respects, Petitioner's compliance history is good. The Commission agrees the penalties were calculated correctly. However, they are disproportionate to the tax due. Strict application of the law in this case approaches an unconscionable result. Therefore, the Commission exercises its discretion and imposes a \$\$\$\$\$ failure to file penalty, and a \$\$\$\$\$ failure to pay penalty for the period ending March 31, 1998. The remaining penalties are abated. The Division may charge interest on the \$\$\$\$\$ in penalties.

ORDER

Based upon the evidence presented, the Commission denies Petitioner's request for a waiver of the penalties and interest for the period ending March 31, 1998. The Commission grants Petitioner's request as to the remaining penalties, and abates them. It is so ordered.

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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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R. Spencer Robinson  
Administrative Law Judge

BY ORDER OF THE COMMISSION.

The undersigned have reviewed the Initial Hearing Order and 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

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