

06-1108  
Penalty and Interest  
Signed 01/08/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	06-1108
v.	)		
	)	Account No.	#####
TAXPAYER SERVICES DIVISION OF THE	)	Tax Year:	2004
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income
	)		
Respondent.	)	Judge:	Phan

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Manager, Waiver Unit

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on November 16, 2006. Petitioner is appealing penalties and interest assessed for tax year 2004. The penalties assessed were a \$\$\$\$ extension penalty, a \$\$\$\$ failure to pay penalty and interest of \$\$\$\$\$. See Utah Code Sec. 59-1-401.

APPLICABLE LAW

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 Sec. 59-1-401(11).

DISCUSSION

Petitioner asks that penalties be waived indicating that there were a couple of extraordinary

circumstances that left him unable to pay his 2004 income tax when it became due. First he had invested in a company that generally did not realize a profit. He did not have a position of control in the company. For 2004 the company did realize a profit but did not distribute out any money. So on paper he had a gain that he was required to claim on his individual income tax return with no corresponding income from which to pay the tax. Additionally, Petitioner was in the middle of what he described as a very difficult divorce that has been going on for four years. He indicates that his hands had been tied financially by the court in the case which allowed him only a limited monthly income and he did not have the funds to pay the tax. He states that he did eventually borrow the money to pay the tax in June 2006 in hopes that if he did so the penalties would be waived.

Respondent's representative indicated this was a matter of financial hardship and financial hardship was not grounds for waiver of penalties or interest. She also indicated that this was not a first time error situation. Petitioner had not paid his 2001 income tax until January 2003. In 2002 Petitioner has yet to file a Utah Individual Income Tax Return. Petitioner indicates that the return has been prepared as a joint return but his wife will not sign it. It is unclear why Petitioner does not file separately for that year. Respondent's representative indicates that the 2003 return was filed and paid within the extension period so was considered timely.

Interest is assessed when taxes are not paid or underpaid to compensate the state for the time value of money. Interest is generally waived only in the event the Tax Commission, or Tax Commission employee error gave rise to the late payment or underpayment.

After considering the information presented in this matter, the Commission notes that Respondent is correct in its position that financial hardship is not considered basis for waiver of penalties and interest. In this situation, Petitioner argues that there were some extraordinary circumstances that caused the

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financial hardship. However, a difficult divorce and an unexpected profit with a non-cash distribution, in addition to the prior years late payment or late filing do not rise to the level of reasonable cause sufficient for waiver.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the penalties or interest associated with Petitioner's individual income tax for tax year 2004.

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 \_\_\_\_\_, 2006.

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Jane Phan  
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 \_\_\_\_\_, 2006.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

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