

06-1112
Sales Tax Penalty & Interest
Signed 06-1112

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
)		
Petitioner,	)	Appeal No.	06-1112
)		
v.	)	Account No:	#####
)		
TAXPAYER SERVICES	)	Tax Type:	Sales Tax
DIVISION OF THE UTAH	)		Penalty & Interest
STATE TAX COMMISSION,	)	Tax Year:	1/98 – 12/99
)		
Respondent.	)	Judge:	Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER,

PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE, from the Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on November 6, 2006.

At issue is Petitioner's request for a refund of penalties and interest assessed and paid pursuant to an agreement following Petitioner's late filing of returns. Petitioner had been an annual filer. The change to quarterly filing appears to have contributed to the late filings.

Petitioner complied with the terms of the agreement, paying sales tax, penalty, and interest. Her last payment was in April of 2003. She was told to apply for a waiver on completion of the agreement.

Petitioner requested a waiver in a letter dated June 22, 2006. Respondent answered on August 10, 2006. Respondent denied the request for a waiver of the penalties pertaining to the periods

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from January of 1998 through December of 1999 on the grounds the request was outside of the three-year period set forth in statute. Respondent also denied waiver of interest on the grounds that Petitioner had not established reasonable cause.

On August 18, 2006, Petitioner filed a Petition for Redetermination. She stated she felt she should be allowed the waiver because completion of the plan took longer than three years to complete.

Respondent stated at the hearing that had it received the request prior to April 30, 2006, it would have considered the request. Respondent did consider a request for a waiver of penalties associated with the 2000 tax year. Respondent granted that request.

APPLICABLE LAW

UCA § 59-5-214. Limitation of actions.

(2) (a) Except as provided in Subsection (2)(b), the commission may not make a credit or refund unless the taxpayer files a claim with the commission within three years of the date of overpayment.

(b) Notwithstanding Subsection (2)(a), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (2)(a) if:

- (i) the three-year period under Subsection (2)(a) has not expired; and
- (ii) the commission and the taxpayer sign a written agreement:
 - (A) authorizing the extension; and
 - (B) providing for the length of the extension.

UCA § 59-12-110. Overpayments, deficiencies, and refunds procedures.

(2) (a) If a taxpayer pays a tax, penalty, or interest more than once or the commission erroneously receives, collects, or computes any tax, penalty, or interest, including an overpayment described in Subsection (1)(c), the commission shall:

- (i) credit the amount of tax, penalty, or interest paid by the taxpayer against any amounts of tax, penalties, or interest the taxpayer owes; and
- (ii) refund any balance to the taxpayer or the taxpayer's successors, administrators, executors, or assigns.

(b) Except as provided in Subsections (2)(c) and (d) or Section 19-2-124, a taxpayer shall file a claim with the commission to obtain a refund or credit under this Subsection (2) within three years from the day on which the taxpayer overpaid the tax, penalty, or interest.

(c) Notwithstanding Subsection (2)(b), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (2)(b) if:

- (i) the three-year period under Subsection (2)(b) has not expired; and
- (ii) the commission and the taxpayer sign a written agreement:
 - (A) authorizing the extension; and
 - (B) providing for the length of the extension.

DISCUSSION

It does not appear there was an overpayment, or an error in collecting the penalty assessed. Assuming there was an overpayment or error, the request for a waiver of the penalty was not made within three years of its assessment. It was not made within three years following completion of the agreement of the parties for Petitioner to pay the taxes, penalty and interest. Absent proof the agreement authorized an extension, and that the request was made in accordance with the terms of the extension, the Commission has no authority to grant the requested waiver.

DECISION AND ORDER

Based upon the foregoing, the Commission denies Petitioner's appeal and sustains the Division's denial of Petitioner's refund request. 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

Appeal No. 06-1112

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

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