

06-1121  
Withholding Tax  
Signed 02/16/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	06-1121
v.	)		
	)	Account No.	#####
AUDITING DIVISION OF THE	)		
UTAH STATE TAX COMMISSION,	)	Tax Type:	Withholding Tax
	)		
Respondent.	)	Judge:	Phan

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE, Attorney at Law

For Respondent: RESPONDENT REPRESENTATIVE, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on January 24, 2007. It had originally been scheduled for a Telephone Status Conference but was converted to an Initial Hearing. Petitioner is appealing penalties and interest assessed with an audit for tax year 2003. The amount of the penalty assessed was \$\$\$\$\$. Interest assessed with the audit was \$\$\$\$\$ and continues to accrue on the unpaid balance.

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's representative did not dispute the tax amount and indicates Petitioner could pay

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the tax if the Commission waived the penalties and interest, but as the Company was in receivership, he would need court approval to pay penalties and interest.

Respondent had pulled the account history and indicated there was no prior penalty listed on the account. The Company had been placed into receivership and assets frozen in 2003. Based on this there is cause for waiver of penalty.

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. There is no basis for waiver of interest.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the penalties associated with Petitioner's 2003 withholding tax. Sufficient cause has not been shown for waiver of the 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 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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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 \_\_\_\_\_, 2007.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

*JKP/ckl/06-1121.int*