

06-1186  
Audit  
Signed 12/29/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>ORDER</b>	
	)		
Petitioners,	)	Appeal No.	06-1186
	)		
v.	)	Tax Year.	2003
	)		
	)	Account No.	#####
AUDITING DIVISION,	)		
UTAH STATE TAX COMMISSION,	)	Tax Type:	Penalty & Interest
	)		
Respondent.	)	Presiding:	Jensen

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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on December 13, 2006 in accordance with Utah Code Ann. §59-1-502.5.

APPLICABLE LAW

The Tax Commission is granted the authority to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause. Utah Code Ann. §59-1-401(11).

DISCUSSION

The Petitioner is appealing a penalty and interest assessed in connection with audit changes made to the Petitioner's 2003 withholding taxes. The Auditing Division ("Division")

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assessed the penalty on the basis of late payment of taxes when an audit for the 2003 tax year increased the amount of taxes owing for that year.

PETITIONER REPRESENTATIVE appeared on behalf of the Petitioner. He explained that his business was small and that he was the sole person responsible for bookkeeping and tax payment. He explained that while he may have had a few periods in which he was late on either filing or payment in the past, he had generally been able to do a good job with tax filings until he suffered a heart attack on May 6, 2003. From the time of his heart attack until the February 28, 2004 due date of the tax return in question, he had ongoing hospitalization because his heart attack left him with approximately 25% of his heart capacity. In that time, he was hospitalized a dozen times, had five stints placed, and had an ICD implant placed.

During the time in which PETITIONER REPRESENTATIVE was struggling with health problems, his daughter attempted to run the business and file necessary tax documents. PETITIONER REPRESENTATIVE'S daughter had no training in accounting or bookkeeping, but there were few other options to PETITIONER REPRESENTATIVE and his wife who spent most of their time with PETITIONER REPRESENTATIVE'S health problems. The \$\$\$\$ in tax underpayment for the 2003 tax year as determined by the audit was a result of an error in filling out documents. PETITIONER REPRESENTATIVE has reviewed the audit and agrees that the Petitioner owes the additional taxes, but requests relief from the 10% penalty as well as the interest on the overdue amount.

The Division provided information regarding the Petitioner's tax compliance history. Prior to the May 6, 2003 heart attack, the Petitioner had been late in filing or payment of taxes for

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three quarterly periods. The Petitioner paid penalties along with interest where applicable for these periods and did not request a waiver. After May 6, 2003, the Petitioner was late on five quarterly filings and paid penalties or interest on these five quarters. The Petitioner did not request waivers and has paid the taxes, penalties, and interest for these quarters. The only waiver the Petitioner is requesting is for the additional tax owed as a result of the 2003 tax year audit.

Tax Commission Publication 17 sets forth the circumstances under which the Tax Commission will exercise discretion to waive penalties for late filing or late payment of state taxes. This publication is available at <http://www.tax.utah.gov/forms/index.html>. Serious illness can be a reason to waive penalties. The discussion of timing of the illness or injury near to the time the taxes supports a general policy that the illness itself must be the cause of the late filing or payment rather than financial hardship that may flow from medical expenditures. Publication 17 also explains that the Commission will consider tax compliance history in deciding on a penalty waiver request. Interest has a different standard, and is generally waived only upon a showing of Tax Commission employee error.

In this case, the information before the Commission indicates that serious health problems caused the tax filing problems that led to the 2003 tax year underpayment. Both the severity of the Petitioner's representative's health problems and the timing of the tax return at issue support a waiver of the penalty assessed in connection with this audit. Because there is no allegation or proof of Tax Commission error, there is no basis to support a waiver of interest.

#### DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown

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to justify a waiver of penalties in this case. The Commission sustains the assessment of taxes and interest as presented by the Division. 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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Clinton Jensen  
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 \_\_\_\_\_, 2006.

Pam Hendrickson

R. Bruce Johnson

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Commission Chair

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.

*CDJ/06-1186.int*