

06-1212
Penalty & Interest
Signed 03/20/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 06-1212
v.)	
)	Account No. #####
TAXPAYER SERVICES DIVISION,)	
UTAH STATE TAX COMMISSION,)	Tax Type: Penalty & Interest
)	
Respondent.)	Presiding: Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE, from the Taxpayer Services
Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on November 27, 2006.

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

Petitioner is appealing penalties in the amount of \$\$\$\$\$ assessed for the late payment and filing of withholding tax for January and February 2006. In addition to the penalties at issue in

this matter, the Division also added interest on unpaid tax. The Petitioner does not dispute the taxes themselves or interest on those taxes.

Petitioner's representative explained that for many years, the Petitioner had employed the same bookkeeper to make tax filings and payments. The bookkeeper, EMPLOYEE, originally went to work in the Petitioner's office in CITY 1, STATE. When EMPLOYEE'S husband received a job transfer, EMPLOYEE moved to CITY 2, STATE. The Petitioner and EMPLOYEE made arrangements for EMPLOYEE to do the Petitioner's books from CITY 2. This arrangement required that all tax and similar mailings go directly from states and other entities to EMPLOYEE'S address in CITY 2. Because the Petitioner was a small company, EMPLOYEE was the only person doing bookkeeping. This did not cause any problems until EMPLOYEE suddenly and unexpectedly left the employ of the Petitioner on December 26, 2005. EMPLOYEE assisted in her transition out of the company, including the filing of the withholding return and payment for December 2005.

When the Petitioner found itself at the beginning of 2006 without the only person who had been doing its tax filings for many years, it took steps to keep its tax filings current. First, the Petitioner requested that EMPLOYEE, make an expedited mailing of all matters requiring immediate attention. For other books and records, the Petitioner requested that EMPLOYEE package materials into boxes and send them by a slower but more cost-effective shipping method. The expedited shipment did not include Utah withholding tax documents. This did not cause concern, because the Petitioner's company officers understood the Petitioner to be on quarterly filing for Utah withholding tax. A quarterly filing would not have been due until the end of April 2006. But EMPLOYEE had

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changed the company to monthly filing in 2001. As a monthly filer, the Petitioner had a January return due by the end of February 2006 and a February return due by the end of March 2006. The March return was due by the end of April 2006. The Petitioner filed all three months' returns at the end of April 2006. At that time, the March return was timely, but the January return was approximately two months late and the February return was approximately one month late. On that basis, the Division imposed a ten percent failure to pay and a ten percent failure to file penalty for each of the two late months.

Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs/pub-17.pdf>, explains the factors that the Commission will consider in reviewing waiver requests. Unobtainable records and unavoidable absence from the state are listed as possible reasons for waivers of penalties. While there are elements of both factors present, these factors do not squarely fit with either unobtainable records or unavoidable absence. The Petitioner would have had the tax records for January and possibly February in the materials the former bookkeeper sent to Petitioner. These records were not unobtainable, but would have been part of a large number of records that may have taken some time to review. As for unavoidable absence from the state, one cannot say that the one responsible for doing bookkeeping for the Petitioner was unexpectedly absent from the state. The bookkeeper had always been absent from the state and the problem was not absence. Rather, the problem was that she left her employment.

A taxpayer's compliance history can influence the granting of a waiver. Respondent presented evidence of five late filings prior to January 2006. The Petitioner's first two late filings

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were for January and February of 2001. The Petitioner requested and received waivers for both periods for the failure to file and failure to pay. The Petitioner was next late in April and May of 2004. As was the case with the 2001 filings, the Petitioner requested and received waivers for both periods. In October 2004, the Petitioner had a fifth late filing. The Petitioner did not request a penalty waiver for this period. The first two tax filings with problems in 2001 are now old enough that they should not be held against the Petitioner. The problems in April and May 2004 are for two consecutive months. It is thus reasonable to consider these as one occurrence that is likely to have resulted from a single error. Finally, the Commission notes that there is no evidence of problems with compliance after February 2006. While the Petitioner's compliance history is not perfect, it is not so problematic as to rule out a waiver of penalties at this time. Taking all factors as a whole, the Commission finds that circumstances support for a penalty waiver for January and February 2006.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause been shown to justify a waiver of the penalties for in this case. 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. 06-1212

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.

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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
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.

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