

06-1230  
Penalty & Interest  
Signed 04/24/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
	)		
Petitioner,	)	Appeal No.	06-1230
	)	Account No.	#####
v.	)		
	)		
AUDITING DIVISION,	)	Tax Period:	2003
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 in accordance with Utah Code Ann. §59-1-502.5 on January 8, 2007. Petitioner is appealing interest of approximately \$\$\$\$ for the late payment of withholding tax for the filing period of January 1, 2003 to December 31, 2003. The Petitioner's representative explained that his was a small business with one bookkeeper. This arrangement worked well and the parties agree that the Petitioner has a good record of timely filing and payments before 2003. PETITIONER REPRESENTATIVE testified that the business had not had a tax payment problem in 30 years of operation before 2003. But in May 2003, the bookkeeper retired. PETITIONER REPRESENTATIVE indicated that he had little

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bookkeeping experience and no computer skills. Accordingly, he immediately hired another bookkeeper to take over the computer and accounting tasks. The new bookkeeper had little experience and the parties agree that the new bookkeeper made an error on the 2003 withholding tax forms that resulted in an underpayment for the year. The Petitioner agrees with the audit and has paid the underpayment but requests waiver of interest on the underpayment.

#### 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

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. This publication indicates that grounds for waiving interest are more stringent than for penalty and that a taxpayer generally has to show Tax Commission error to qualify for an interest waiver. Compliance history is one of the factors the Commission will consider in reviewing a waiver request.

In this case, the Petitioner presented testimony of many years of timely filing and payments as well as a simple error notwithstanding reasonable efforts to replace a long-time bookkeeper. These factors are sufficient to provide good cause to waive a penalty. But in this case, the Division did not assess a penalty. The Petitioner did not allege or demonstrate any Tax Commission error that would support a waiver of interest.

#### DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has not been

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shown to justify a waiver of interest for the 2003 tax year. 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.

\_\_\_\_\_  
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

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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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