

06-1240
Sales
Signed 02/12/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
)		
Petitioner,	)	Appeal No.	06-1240
)		
v.	)	Period	June 2006
)		
	)	Account No.	#####
TAXPAYER SERVICES DIVISION,)		
UTAH STATE TAX COMMISSION,	)	Tax Type:	Sales
)		
Respondent.	)	Presiding:	Robinson

Presiding:
R. Spencer Robinson, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE, Owner
For Respondent: RESPONDENT REPRESENTATIVE, from the Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on January 8, 2007 in accordance with Utah Code Ann. §59-1-502.5. Petitioner requests a waiver of penalty and interest associated with the sales tax return for June 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

The Petitioner is requesting a waiver of penalty and interest associated with the late filing and payment of its June 2006 sales tax return. The return and payment were due on July 31, 2006. Petitioner tendered full payment, including penalty and interest, on August 10, 2006.

PETITIONER REPRESENTATIVE, who owns and operates Petitioner's business, suffered a stroke on May 28, 2006. He was incapacitated for eight weeks. His physician released him to return to work, part-time, on July 1, 2006. He did not resume his full duties until the end of July.

Petitioner's bookkeeper had a baby in July. She was out six weeks.

On August 4, 2006, an employee noticed the sales tax payment for June had not cleared the bank. She called the Tax Commission and received information about the total due, including penalty and interest. Petitioner tendered full payment of taxes, penalty, and interest on August 10, 2006. Petitioner also submitted a request for a waiver of penalty and interest.

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. One of the circumstances supporting a waiver of penalties is serious illness.

In this case, PETITIONER REPRESENTATIVE'S stroke and the bookkeeper giving birth around the time the June return and payment were due are health issues that support a waiver of the penalties. RESPONDENT REPRESENTATIVE stated the medical information acquired after the original denial would support a waiver of the penalties. She explained the division had initially denied the waiver because of compliance history.

Interest is subject to a different standard. Generally, interest is waived only upon a showing of Tax Commission employee error. There is no evidence of Tax Commission employee error.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that medical circumstances are sufficient cause to justify a waiver of the penalty in this case. The penalty is to be refunded. The Commission sustains the assessment of interest. It is so ordered.

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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.

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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