

06-1324
Withholding Tax Penalty
Signed 05/18/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	
)	ORDER
Petitioner,)	
)	Appeal No. 06-1324
v.)	
)	Account No. #####
TAXPAYER SERVICES DIVISION,)	Tax Type: Withholding Tax
UTAH STATE TAX COMMISSION,)	Penalty
)	Tax Period: 03/06 –06/06
Respondent.)	
)	Presiding: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, via telephone

For Respondent: No one appeared

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on January 9, 2007 in accordance with Utah Code Ann. §59-1-502.5. The Petitioner appealed a decision by the Taxpayer Services Division (the “Division”) denying waiver of penalties and interest. The Division waived the penalty for January of 2006 based on Petitioner’s previous record of filing and paying on time. The Division declined to waive penalties for the remaining four periods, March, April, May, and June of 2006. The penalties totaled \$\$\$\$\$. As of September of 2006, interest was \$\$\$\$\$. The Division did not waive interest. Petitioner is not requesting a waiver of interest.

PETITIONER REPRESENTATIVE appeared via telephone. No one appeared on behalf of the Division. PETITIONER REPRESENTATIVE requested a default be entered against the Division.

APPLICABLE LAW

Utah Code Ann. §59-1-401 (1) (a) “The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return.”

Utah Code Ann. §59-1-401 (2) “The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:

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(b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);

Utah Code Ann. §59-1-401(11) “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 Ann. §59-1-402.

(2) Except as otherwise provided for by law, the interest rate for a calendar year for all taxes and fees administered by the commission shall be calculated based on the federal short-term rate determined by the Secretary of the Treasury under Section 6621, Internal Revenue Code, and in effect for the preceding fourth calendar quarter.

(5) Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

DISCUSSION

Petitioner did not file withholding returns or remit withholding tax payments for January 2006, or for March through June of 2006. The Division waived

penalties for January 2006 based on compliance history, and imposed penalties for failure to file and failure to pay in accordance with the statutes on the remaining periods. Because the Division did not appear, the Commission has no other information on Petitioner's compliance history.

Petitioner submitted a Petition for Redetermination. It requests a waiver of penalties and sets forth the rationale for its request. The Petition states an insubordinate former employee held the checks and returns, instead of submitting them. When Petitioner received notice of the delinquent taxes, it discovered the error. This was after the employee left the company.

As indicated above, the Division granted waivers for January of 2006. Applying its guidelines, the Division declined to grant additional waivers for the four periods of March through June of 2006.

Petitioner argues it should receive the waiver because it relied on an employee. Reliance on an employee is not the same as reliance upon a competent tax advisor, referenced in Publication 17. Generally, employees' actions, or inactions, are attributable to the company employing them, and do not support a waiver.

When the actions of employee constitute embezzlement, also mentioned in Publication 17, a waiver may be granted. In this case, the former employee did not convert the money to his or her use. Hence, no embezzlement occurred. Additionally, Petitioner had the funds when it became aware the former employee had not filed the returns or remitted the payments. It did not show it was unable to obtain replacement funds from any other source, a second element set forth in Publication 17.

The Commission denies Petitioner's request to default the Division. Were the Commission to enter an Order of Default, the Division could move to set the default aside, or request a Formal Hearing. The Petitioner would have the same options if the situation were reversed.

Petitioner provided sufficient information in the Petition for Redetermination to allow the Commission to rule on the requested waiver. Petitioner is not prejudiced by ruling on its information. Administrative economy supports rendering a decision on the available information.

DECISION AND ORDER

Based upon the foregoing, the Commission finds the conduct of Petitioner's former employee does not establish reasonable cause for a waiver of penalties. However, absent information on Petitioner's compliance history, the Commission grants waivers for March and April of 2006, as a second and third period subject to waiver within three years. The Commission denies Petitioner's request for a waiver of penalties for May and June of 2006.

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

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.