

06-1421
Withholding Tax Penalty & Interest
Signed 06/07/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	06-1421
v.)		
	)	Account No.	#####
TAXPAYER SERVICES DIVISION,	)	Tax Type:	Withholding Tax
UTAH STATE TAX COMMISSION,	)		Penalty & Interest
	)	Tax Period:	06/06 & 07/06
Respondent.	)	Presiding:	Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, by phone

For Respondent: RESPONDENT REPRESENTATIVE, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on January 30, 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 granted waivers for July, August, November, and December of 2005. The Division declined to waive penalties for June and July of 2006.

As of August 25, 2006, the penalty for June of 2006 was \$\$\$\$\$ and interest was \$\$\$\$\$. As of September 29, 2006, the penalty for July of 2006 was \$\$\$\$\$ and interest was \$\$\$\$\$.

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:

....

(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 converted to monthly filing in July, 2004. He was to file by EFT. There were no issues until July of 2005. Petitioner paid July, August, November, and December of 2005 by check, instead of by EFT.

The Division’s initial contact with Petitioner was in January of 2006. By May of 2006, Petitioner had filed all returns and paid the taxes due. By June of 2006, Petitioner had sufficient notice of what was required.

The June and July 2006 returns were due after notice to Petitioner of what was required. Though Petitioner may have relied on a company employee, such as a CPA, or on an external professional provider, the errors occurred after adequate notice of what was required. Such notice is attributed to the employee or provider.

As indicated above, the Division granted waivers for the first three periods, May, June, and July of 2005. Applying its guidelines, the Division declined to grant additional waivers.

The Commission did not have the time value of the money it should have received with timely filed withholding tax returns. Absent action by the Commission causing the error, interest is generally not waived.

DECISION AND ORDER

Based upon the foregoing, the Commission finds Petitioner has not established reasonable cause for a waiver of penalties in this case. The Commission denies Petitioner's request for a waiver of penalties.

There is no Commission error contributing to the failure to timely file and pay the withholding returns. The Commission sustains the Division's assessment of interest. 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.

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.