

06-1436
Withholding Tax Penalty
Signed 06/07/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 06-1436
v.)	
)	Account No. #####
TAXPAYER SERVICES DIVISION,)	Tax Type: Withholding Tax
UTAH STATE TAX COMMISSION,)	Penalty
)	Tax Periods: 10/05 – 03/06
Respondent.)	
)	Presiding: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE

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 declined to waive penalties for the fourth quarter of 2005 and the first quarter of 2006 based on compliance history. The penalty for the fourth quarter of 2005 was \$\$\$\$\$. The penalty for the first quarter of 2006 was \$\$\$\$\$.

Petitioner has paid the total amount owed. Petitioner requests a waiver of the penalties and interest.

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’s wife has been the Secretary/Treasurer for the company. Her health caused late filings. Late filings began in 2004. PETITIONER REPRESENTATIVE acknowledged he accepted his wife filing and paying late because of her health.

By April 19, 2006, eleven days prior to the time for filing the return for the first quarter of 2006, (X) health deteriorated to the point she was admitted to the hospital. She remained there until December of 2006.

Petitioner filed the return for the fourth quarter of 2005 in March of 2006, and submitted payment on November 27, 2006. The tax due was \$\$\$\$\$. Respondent assessed a late filing penalty of \$\$\$\$\$, and a late payment penalty of \$\$\$\$\$.

Petitioner filed the return for the first quarter of 2006 in July of 2006. The tax due was \$\$\$\$\$. Respondent assessed a late filing penalty of \$\$\$\$\$, and a late payment penalty of \$\$\$\$\$.

When Respondent denied Petitioner's request to waive the penalties and interest, Petitioner submitted a Petition for Redetermination. It requests a waiver based on (X).

At the hearing, RESPONDENT REPRESENTATIVE agreed to waive the penalty for the first quarter of 2006. She did so because (X) entered the hospital eleven days prior to the deadline for filing the return for that quarter. She declined to waive the penalty for the fourth quarter of 2005, and declined to waive interest.

PETITIONER REPRESENTATIVE provided documentation that COMPANY A had granted a waiver for late payment of employer contributions. He also provided documentation that the COMPANY B held in abeyance a penalty assessed for failure to provide worker's compensation insurance. He represented these actions were taken by other State agencies because of his wife's health.

Petitioner did not state he relied on advice from an employee of the Tax Commission. He did not assert Tax Commission error. Absent such, the Commission usually does not waive interest. Petitioner had the time value of the money owed through no fault of the Commission.

Publication 17 sets forth a number of circumstances that may establish reasonable cause. One is death or serious illness.¹ A health condition resulting in an extended hospitalization eleven days prior to the filing deadline qualifies a reasonable cause. A longstanding health condition that delays filing over several periods does not establish reasonable cause.

¹ The death or serious illness of a taxpayer or a member of the immediate family caused the delay. With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family, who had sole authority to file the return. The death or illness must have occurred on or immediately prior to the due date of the return.

DECISION AND ORDER

Based upon the foregoing, the Commission waives the penalty for the first quarter of 2006. As the Petitioner has paid the amounts sought by the Division as penalty and interest, the penalty for the first quarter of 2006 is to be refunded. Interest, if calculated on the penalty imposed for the first quarter of 2006, is to be recalculated. The difference, if any, is to be refunded. The Commission sustains the penalty and interest for the fourth quarter of 2005.

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.

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