

07-0002
Sales Tax Penalty & Interest
Signed 07/30/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	07-0002
v.)		
	)	Account No.	#####
TAXPAYER SERVICES DIVISION,	)	Tax Type:	Sales Tax
UTAH STATE TAX COMMISSION,	)		Penalty & Interest
	)	Tax Period:	03/06
Respondent.	)	Presiding:	Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Vice President and Controller,
PETITIONER.

For Respondent: RESPONDENT REPRESENTATIVE, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on March 20, 2007, in accordance with Utah Code Ann. §59-1-502.5. The parties were represented as indicated above.

The Division waived a penalty of \$\$\$\$\$ for January of 2006. This was the fourth error in the previous three years. The Division declined to waive the penalty of \$\$\$\$\$, and interest (\$\$\$\$\$ as of November 9, 2006) for March of 2006. The Petitioner appealed a decision by the Taxpayer Services Division (the "Division") denying waiver of penalty and interest for March of 2006.

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

EMPLOYEE, an employee of Petitioner, made an error in electronic filing for January of 2006. What followed was application of the January 2006 payment to February of 2006. A cascade effect followed, with the February 2006 payment being applied to March 2006.

In March, EMPLOYEE contacted the Tax Commission. He spoke with (X). (X) made adjustments to take care of the cascade effect.

EMPLOYEE waited for the adjustments to be made before filing the return and making the payment for March of 2006. Petitioner’s March 2006 payment was two days late.

Petitioner asks that the penalty be waived because of the need to wait until the corrections to its account were made. Petitioner pointed out the filing and payment were two days late.

Respondent pointed out the taxpayer is to designate the specific period to which payment is to apply. Respondent argued the need to realign the payments to the correct months was caused by the taxpayer’s error.

A letter from EMPLOYEE dated September 18, 2006 states (X) said there would be no penalties or fines related to the issue. A June 22, 2006 comment in Respondent's records notes the March payment was two days late. There is nothing in the comment about a waiver.

DECISION AND ORDER

Based upon the foregoing, the Commission finds Petitioner has not established reasonable cause for a waiver of penalties in this case. Petitioner had previously received waivers. Petitioner is responsible for the error leading to the penalty and interest. The Commission denies Petitioner's request for a waiver of the penalty.

There is no Commission error contributing to the failure to timely file and pay the sales tax 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.

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