

07-0013  
Penalty & Interest  
Signed 07/10/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No.    07-0013
v.	)	
	)	Account No.    #####
TAXPAYER SERVICES DIVISION,	)	Tax Period:    2005
UTAH STATE TAX COMMISSION,	)	Tax Type:      Penalty & Interest
	)	
Respondent.	)	Presiding:    Jensen

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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER

                    PETITIONER REPRESENTATIVE, CPA

For Respondent:  RESPONDENT REPRESENTATIVE, from the Taxpayer Services  
                    Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on March 5, 2007. This appeal arises from the Division's assessment of a ten percent failure to pay penalty of \$\$\$\$ and a ten percent failure to file penalty of \$\$\$\$ for the 2005 tax year. Of the total penalties of \$\$\$\$\$, Petitioner disputes only the ten percent penalty for failure to file.

On October 17, 2006, Petitioner electronically filed his 2005 tax return. Because the April 15 due date for 2005 tax returns fell on a Saturday in 2006, the due date for 2005 federal and state tax returns was April 17, 2006. October 17, 2006 was six months after the April 17, 2006 due date and was thus within the six-month automatic extension for the filing of a Utah tax return.

Although Petitioner electronically filed his 2005 Utah tax return within the time allowed under Utah's automatic extension, the Tax Commission rejected it because of a problem

with the social security number under which Petitioner filed. At some stage in the process of preparing and submitting the return, the social security ending in ##### was entered as #####. The parties agree that there were no other problems with Petitioner's 2005 return and if the return had come by mail, the Tax Commission would have accepted it as timely and allowed Petitioner to correct the error on the social security number.

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

In this case, there is good cause to waive the failure to file penalty. Petitioner supplied all of the necessary documents to a competent tax adviser in time to complete Petitioner's tax return within the extension period for the 2005 tax year. He made payment of the tax amount in full on October 17, 2006. If not for a minor error in a social security number, Petitioner's tax return would have been filed and paid within the time for an automatic extension. Under these circumstances, the Commission is willing to waive the 10% failure to file penalty.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the 10% failure to file penalty of \$\$\$\$\$. 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

Appeal No. 07-0013

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Clinton Jensen  
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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