

07-0162
Penalty & Interest
Signed 09/12/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

TAXPAYER SERVICES DIVISION, UTAH
STATE TAX COMMISSION,

Respondent.

ORDER

Appeal No. 07-0162

Account No. #####

Tax Type: Penalty & Interest

Tax periods: May 2006, June 2006, July 2006,
and August 2006

Judge: Jensen

Presiding:

Clinton Jensen, 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 in accordance with Utah Code Ann. § 59-1-502.5 on May 3, 2007. Petitioner is appealing penalties and interest for the late payment of sales taxes for the following periods and amounts:

<u>Tax Period</u>	<u>Penalty</u>	<u>Interest</u>
May 2006	\$\$\$\$\$	\$\$\$\$\$
June 2006	\$\$\$\$\$	\$\$\$\$\$
July 2006	\$\$\$\$\$	\$\$\$\$\$
August 2006	\$\$\$\$\$	\$\$\$\$\$

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

Petitioner's representative explained that the late filings and payments at issue were the result of Petitioner's implementation of a new software program beginning in 2006. In April and May, Petitioner began training its personnel for a change to the new software. Even with that training and other planning, the switch to the new program on June 1, 2006 did not go as anticipated. For the next several months, problems with the software consumed the time of those involved in any way with bookkeeping or accounting. While the new software did not directly account for or manage payment for sales taxes, the turmoil resulting from the program change proved to be a distraction of such proportion that tax payments were late for four months.

The Division's representative indicated that the Division denied the penalty waiver for three reasons. First, the number of tax periods with late payments seemed excessive. Second, Petitioner did not have a clear filing history. Petitioner's filing history included late filings for April 2002, June 2002, May 2003, October 2003, November 2003, November 2004, and December 2004. Finally, the Division indicated that Petitioner had timely filed three of the four periods at issue for 2006. Thus, the software and staffing issues discussed did not seem to match the facts indicating problems with payment rather than problems with filing.

Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs/pub-17.pdf>, explains the factors that the Commission will consider in reviewing waiver requests. This publication provides for waivers for good cause that are generally things outside the control of the taxpayer. The closest listing to the problems described by Petitioner is a description of a taxpayer who does not have access to tax records necessary to file tax returns.

DECISION AND ORDER

Reviewing the facts in this case, there do not seem to be any facts presented to support a finding that events beyond the taxpayer's control prevented the filing or payment of taxes. For all of the

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periods at issue, Petitioner had the necessary documents to file taxes and did so timely for three of the four periods at issue. Rather, this seems to be a problem of focus in which Petitioner was distracted by other matters. Petitioner's filing history indicates seven delinquent filings or payments in the four years before the late filings at issue in this case. Based upon the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the penalties or interest associated with the May, June, July, or August 2006 tax filings. 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.

Clinton Jensen
Administrative Law Judge

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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.

CDJ./07-0162.int