

07-0217  
Sales Tax / Penalty & Interest  
Signed 09/10/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  vs.  TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION,  Respondent.	<b>ORDER</b>  Appeal No. 07-0217  Tax Type: Sales Tax / Penalty & Interest Tax Period: 10/02 – 12/02 forward Account No. #####  Judge: Robinson
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**Presiding:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE, *pro se*, via telephone  
For Respondent: RESPONDENT REPRESENTATIVE, Compliance Supervisor,  
Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on April 30, 2007, in accordance with Utah Code Ann. §59-1-502.5. The parties were represented as indicated above.

The Taxpayer Services Division (the “Division”) assessed penalties and interest on all periods from July 2002 – September 2002 forward, stating the third quarter of 2002 was the last period Petitioner filed and paid on time. Petitioner asked the Division to waive the penalties and interest. The Division declined. The Petitioner appealed.

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:

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(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 REPRESENTATIVE, the owner of PETITIONER, acknowledged he was responsible for the interest. He said he would expect a reasonable interest fee on money he borrowed. However, he requests a waiver of the penalties.

Petitioner stated that as soon as he learned of the problem with his taxes, he called the Commission. He began making payments in the manner directed as soon as possible.

PETITIONER REPRESENTATIVE’S daughter was seriously injured in a climbing accident on January 8, 2007. His time and financial resources have been focused on her care since then. Payment would add to Petitioner’s financial difficulties.

Respondent said the business opened in June of 1996. Respondent said the third quarter of 2002 was the last period in which Petitioner filed and paid on time. All returns are at least two years late. In addition to the penalties and interest, Respondent has also incurred legal fees in connection with its efforts to obtain payment.

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's history does not support granting a waiver. Petitioner's financial hardship flowing from his daughter's injuries, while unfortunate, does not establish reasonable cause. 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.

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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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