

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;"><u>ORDER</u></p> <p>Appeal No. 07-0222</p> <p>Tax Type: Withholding Tax Penalty and Interest</p> <p>Periods: 07/06 and 08/06</p> <p>Judge: Robinson</p>
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Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Bookkeeper
For Respondent: RESPONDENT REPRESENTATIVE, Compliance Supervisor,
Taxpayer Services

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 Petitioner appealed a decision by the Taxpayer Services Division (the "Division") denying waiver of 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 hired PETITIONER REPRESENTATIVE on August 7, 2006. She found paperwork that had not been filed. She sent it in. Since she assumed responsibility for filing and paying, Petitioner has timely filed and paid. Petitioner requested a waiver of the penalty in the amount of \$\$\$\$ and interest in the amount of \$\$\$\$ for July 2006. Petitioner also requested a waiver of the penalty in the amount of \$\$\$\$ and interest in the amount of \$\$\$\$ for August 2006. Interest continues to accrue.

Respondent assessed the penalties because the returns and payments for July and August of 2006 were late. Respondent reviewed Petitioner’s compliance history when it considered the waiver request.

Respondent granted waivers for August and October of 2002. Petitioner denied waivers for April, May, and June of 2003. Petitioner did not appeal those denials.

Respondent said there were incidents of non-compliance in 2004. Petitioner did not request waivers for 2004. It paid penalties and interest.

Respondent properly considered Petitioner’s compliance history in making its decision. Though the change in personnel has manifest positive results, the penalties were assessed in accordance with the law. The evidence does not establish reasonable cause for a waiver of the penalties.

The Commission did not have the time value of the money it should have received with timely filed withholding tax returns. Absent action by the Commission causing the error, interest is generally not waived.

DECISION AND ORDER

Based upon the foregoing, the Commission finds Petitioner has not established reasonable cause for a waiver of penalties in this case. The Commission denies Petitioner's request for a waiver of penalties.

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

