



manual forms to electronic funds transfer (“EFT”). Petitioner’s representative described struggling to learn the new system, including going through five different people at the Tax Commission trying to get advice. Petitioner’s representative described particular difficulty with the category for tourism tax for prepared food. Petitioner did resolve these issues, but not until after four months of late payments. Petitioner’s representative indicated that no one at Petitioner’s organization knew that the Commission was assessing penalties until receipt of the first penalty notice dated September 29, 2006.

The Division’s representative testified that for each of the four periods at issue, Petitioner filed either on the due date or shortly thereafter. On that basis, the Division did not assess failure to file penalties. After reviewing screen prints from the Division’s computer system for each of the four periods at issue, the Division representative determined that Petitioner had most likely selected the wrong funds release date when entering data into the EFT system. For June 2006, Petitioner filed on time but selected a release date nine days after the filing date. For July 2006, Petitioner filed on time but selected a release date three days after the filing date. For August and September 2006, the funds release dates matched the filing dates, but filing dates were late.

The Division’s representative indicated that part of the Division’s reasons for denying waiver requests in this case was compliance history. According to Division records of the three years before the periods at issue, Petitioner had been late filing or paying taxes three times: In the second quarter of 2003, in July 2003, and in December 2004. Petitioner’s representative explained that the second quarter of 2003 was the last quarter of quarterly filing and was getting to be a large and unwieldy return as the business grew. The late return the following month in July 2003 was a result to switching from quarterly to monthly filing. The penalty for December 2004 came as Petitioner switched to a streamline tax system. Petitioner disputes the late payment for December 2004, but indicated that the amount at issue was not sufficient to warrant filing an appeal at a busy time of year. The Division waived penalties for second quarter 2003 and July 2003.

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Petitioner did not request a waiver of penalties for December 2004.

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 lists factors such as unobtainable records, error by a first-time filer, and a change in tax law that a taxpayer would not reasonably know about, but does not precisely describe problems learning a new tax procedure. Publication 17 also explains that when considering waiver requests, the Tax Commission will consider a taxpayer's compliance history.

Applying the principles set forth in Tax Commission publications, it is evident that the Commission makes some allowance for a taxpayer making a good-faith effort to learn a new tax filing or payment procedure. That allowance is not unlimited and depends on a good compliance history. Petitioner's compliance history is mixed. It demonstrates an effort to comply with state tax requirements, but also suggests that greater effort might be necessary to help insure correct and timely tax filings and payments. On the basis of the evidence presented, the Commission finds good cause to waive penalties for June, July, and August 2006, but sustains the Division's denial of a waiver for September 2006.

#### DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the penalties associated with the June 2006 period in the amount of \$\$\$\$\$, for the July 2006 period in the amount of \$\$\$\$\$, and for the August 2006 period in the amount of \$\$\$\$\$. The Commission finds that good cause has not been shown to justify a waiver of penalty for the September 2006 tax period. 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

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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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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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