

07-0394
Corp. Franchise Tax Penalty & Interest
Signed 09/10/2007

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>ORDER</p> <p>Appeal No. 07-0394</p> <p>Tax Type: Corp. Franchise Tax Penalty & Interest</p> <p>Account No. #####</p> <p>Tax Year: July 2005 – June 2006</p> <p>Judge: Robinson</p>
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Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, employee of PETITIONER REPRESENTATIVE 2, CPA, POA

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 June 14, 2007. This appeal arises from the Division's decision on Petitioner's waiver request for the July 2005 through June 2006 tax year.

The Division sent notice of its decision declining Petitioner's waiver request on March 8, 2007. Petitioner filed a Petition for Redetermination on March 26, 2007. Petitioner said it understood the Division denied the request based on late filing the previous year. Petitioner did not believe it had filed late the previous year. The Petition for Redetermination designated PETITIONER REPRESENTATIVE 2, CPA, as the Petitioner's representative. PETITIONER REPRESENTATIVE 1, employed by PETITIONER REPRESENTATIVE 2, represented Petitioner at the hearing.

Petitioner is an agricultural corporation. It has a gas credit each year. It treated this like making estimated payments. The credit is applied for when the return is filed. Petitioner factored that in, and made quarterly payments in anticipation of the refund, rather than waiting for the refund. It has now corrected the way it handles the credit and does not anticipate future compliance issues.

Respondent produced a spreadsheet showing Petitioner sustained an extension penalty of \$\$\$\$\$, and a failure to pay penalty of \$\$\$\$\$ for the period of July 2004 through June of 2005. The penalties were assessed for failure to file quarterly estimated tax payments. See Utah Code Ann. §59-7-504 (2). Respondent waived those penalties.

For the period of July 2005 through June of 2006, Respondent assessed an extension penalty of \$\$\$\$\$ and a failure to pay penalty of \$\$\$\$\$. Respondent also assessed interest.

Respondent said Petitioner failed to make prepayments in the prescribed manner. The failure was tied to Petitioner's practice of factoring in the gas credit as it made its prepayments. Based on compliance history, Respondent declined to waive the penalties.

Petitioner has paid all amounts due. The account balance is zero. Petitioner requests a refund of penalties and interest.

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, Petitioner does not believe it filed late the previous year. Petitioner has the burden of proof. It did not offer evidence countering the information provided by Respondent. Respondent's evidence establishes late filing and payment. Its mistaken practice of factoring gas credits into its prepayments does not establish reasonable cause.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the penalty and 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

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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.

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