

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioners, vs. TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION, Respondent.	ORDER Appeal No. 07-0568 Tax Type: Corp. Franchise Tax / Penalty Account No. ##### Tax Year: 2005 Judge: Robinson
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Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Corporate Treasurer, via telephone
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 July 31, 2007. This appeal arises from the Division's assessment of an extension penalty of \$\$\$\$ for the 2005 tax year. Petitioner requests a waiver of the extension penalty.

APPLICABLE LAW

59-10-516. Filing extension - Payment of tax - Penalty - Foreign residency.

- (1) (a) The commission shall allow a taxpayer an extension of time for filing returns.
 - (b) The extension under Subsection (1)(a) may not exceed six months.
- (2) (a) Except as provided in Subsection (2)(b), the commission may not impose on a taxpayer during the extension period prescribed under Subsection (1) a penalty under Section 59-1-401 if the taxpayer pays, on or before the 15th day of the fourth month following the close of the taxpayer's taxable year:
 - (i) at least 90% of the total tax reported on the income tax return when it is filed;
or
 - (ii) an amount equal to the total amount of tax reported on the income tax return for the previous year.
- (b) If a taxpayer fails to meet the requirements of Subsection (2)(a), the commission may apply to the total balance due a penalty as provided in Section 59-1-401.

59-1-401. Offenses and penalties - Rulemaking authority - Statute of limitations - Commission authority to waive, reduce, or compromise penalty or interest.

(4) (a) In case of an extension of time to file an individual income tax or corporate franchise tax return, if the lesser of 90% of the total tax reported on the tax return or 100% of the prior year's tax is not paid by the due date of the return, not including extensions, a 2% per month penalty shall apply on the unpaid tax during the period of extension.

(b) If a return is not filed within the extension time period as provided in Section 59-7-505 or 59-10-516 penalties as provided in Subsection (1) and Subsection (2)(b) shall be added in lieu of the penalty assessed under this Subsection (4) as if no extension of time for filing a return had been granted.

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 REPRESENTATIVE said she had a bookkeeper that bypassed her. The bookkeeper was employed internally. PETITIONER REPRESENTATIVE agreed that as Corporate Treasurer and credit manager, she should have known when taxes were due and whether they had been paid.

When PETITIONER REPRESENTATIVE learned the payment had not been made, she forwarded it immediately. She did not hear anything from the Commission for some time. When she learned of the penalty, she appealed. She said the bookkeeper responsible for this had been fired. She said she had had a series of inept bookkeepers.

The Division said the payment was due on April 17, 2006. It received payment of \$\$\$\$ on July 28, 2006. Petitioner filed the return on September 28, 2006. There was a balance due when the return was filed. The application for an extension was faxed on November 7, 2006.

The extension penalty is \$\$\$\$\$. In deciding whether to waive it, the Division reviewed Petitioner's history. For the 2002 tax year, the return was due on April 15, 2003. Petitioner filed on July 28, 2003. For the 2003 tax year, Petitioner made payment using a social security number, rather than a federal ID number. The Division waived penalty and interest because Petitioner caught the error and made payment. For the 2004 tax year, the return was due April 17, 2005. Petitioner filed on August 19, 2006.

DECISION AND ORDER

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Based upon the foregoing, the Commission sustains the extension penalty of \$\$\$\$\$, plus 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.

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