

07-0643
Penalty & Interest
Signed 10/29/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	ORDER
Petitioner,	Appeal No. 07-0643
vs.	Account No. #####
TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION,	Tax Type: Penalty & Interest
Respondent.	Tax period: August 2006
	Judge: Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE, Waivers Unit, 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 August 21, 2007. Petitioner is appealing penalties of \$\$\$\$ and interest of approximately \$\$\$\$ for the late filing and late payment of withholding tax for the filing period of August 2006.

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

Petitioner's representative explained that the tax return and payment for the tax period at issue were due on September 30, 2006 and that on that day, Petitioner timely mailed a return and check for full payment of the taxes due. Petitioner produced evidence that the check at issue was check number #####. On or about

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November 20, 2006, a representative of the company noticed that check number ##### had not cleared the bank. On that basis, the representative initiated a telephone call to the Tax Commission to ask whether the commission had received the return and check at issue. The representative testified that the commission employee explained that the commission was experiencing a computer problem at the time and that it would be necessary to call back “after the holidays.”

Petitioner received a document titled “Notice of Failure to File” dated January 19, 2007. In response to that document, Petitioner issued a stop payment for check number ##### and issued a replacement check on January 23, 2007 bearing check number #####.

Petitioner’s representative acknowledged past problems with timely filing and payment of withholding taxes. But the representative explained that the prior late payments were actually under a different company owner. Petitioner’s representative explained that until July 2006, the current owner of the company had held only a 10% share in the company. In July 2006, the previous holder of the 10% share purchased the business, including the company name. Petitioner’s representative explained that one of the first steps by the new owner was to undertake efforts to resolve some of the business’s past problems, including the late tax payments at issue in this case.

The Division’s representative explained that the Division denied a waiver of penalty in this case largely because of Petitioner’s compliance history. In the three years before the August 2006 period at issue, Petitioner had been late in filing or paying taxes four times. Petitioner’s returns or payments had been late for January 2005, April 2006, May 2006, and July 2006. The Division viewed the late payment and filing of the August 2006 as a continuation of a pattern of noncompliance rather than an isolated occurrence caused by mailing problems.

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. Among the reasons for waiving

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penalties, the publication lists mail that was properly addressed but not delivered. The publication lists error by a first time filer as a reason to waive a penalty. The publication also indicates that the commission will consider a taxpayer's compliance history as a factor in the decision to grant or deny a waiver.

Applying these factors, the commission notes that the August 2006 return was the first withholding return for Petitioner's current owner. This fact, coupled with the efforts to properly address and mail a return and payment, persuade the commission to waive the penalties at issue on the basis of a first time filing error.

Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, a taxpayer needs to show Tax Commission error. In this case, Petitioner tried to resolve this matter in November 2006. There is evidence that Petitioner would have resolved the issue of payment for the August 2006 tax period in November 2006 if the Commission had been in a position to provide timely answers to Petitioner's phone inquiry. On that basis, the Commission finds good cause to waive interest after November 20, 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 August 2006 tax period in the amount of \$\$\$\$\$. The Commission finds that sufficient cause has been shown to justify a waiver of the part of the interest associated with the August 2006 tax period accruing after November 20, 2006. 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

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Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2007.

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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