

07-0694  
Sales  
Signed 09/25/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p><b>ORDER</b></p> <p>Appeal No. 07-0694</p> <p>Account No. #####</p> <p>Tax Type: Sales</p> <p>Tax period: November 2006</p> <p>Judge: Jensen</p>
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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE, from COMPANY A

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 September 10, 2007. Petitioner is appealing interest of approximately \$\$\$\$ for the late payment of sales tax for the filing period of November 2006. The Division received a timely return and has waived penalty for this matter, but did not waive interest because it maintained that the payment was not timely.

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

At hearing, Petitioner's representative indicated that he was from the accounting firm that prepared sales tax returns for Petitioner. Petitioner relies on a May 31, 2007 letter indicating that it is the accounting firm's practice to include payment checks in the same window envelope that the firm uses to mail the return to the Tax Commission. Although the letter indicates that it is impossible for a return without a check to reach the Commission, neither the letter nor testimony before the Commission indicated that the accounting firm

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followed its normal procedure in this case.

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 makes allowance for the waiver of penalties for issues such as mailing problems and reliance on a competent tax adviser. However, grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, a taxpayer needs to make a showing of Tax Commission error.

In this case, the facts support a waiver of penalties, but the Division has already waived all penalties for the period at issue. Petitioner has not shown Tax Commission error and thus the Commission is without sufficient evidence to waive interest in this matter.

**DECISION AND ORDER**

Based upon the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the interest associated with Petitioner's November 2006 sales tax period the approximate amount of \$\$\$\$\$. 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.

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Clinton Jensen  
Administrative Law Judge

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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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