

07-0876
Sales Tax Penalty
Signed 11/21/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

TAXPAYER SERVICES DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

ORDER

Appeal No. 07-0876

Account No. #####

Tax Type: Sales Tax Penalty

Tax Period: 1/07-3/07

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE 1, Supervisor Waiver Unit
RESPONDENT REPRESENTATIVE 2, Tax Compliance Agent

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5 on September 25, 2007. Petitioner is appealing the penalty assessed for the late payment of sales tax for the first quarter of 2007. The amount of the penalty was \$\$\$\$ based on 10% of the tax due pursuant to Utah Code Sec. 59-1-401.

APPLICABLE LAW

The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for (a) failure to pay any tax, as reported on a timely filed return; (b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a). Utah Code Sec. 59-1-401(2).

Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received. Utah Code Sec. 59-1-402 (5).

Upon making a record of its actions, and upon reasonable cause shown the commission may waive, reduce or compromise any of the penalties or interest imposed under this part. Utah Code Sec. 59-1-401(11).

DISCUSSION

Petitioner's representative acknowledged that he had been late for periods prior to the one at issue in this matter for various reasons. However, in this instance he felt the late payment was not his fault, but had been due to an error on the part of the employee he had hired to perform the accounts payable functions. Petitioner's representative indicated that he had written and signed the check and this employee should have mailed it with the return. However, it never was mailed. Months later he found the unmailed return and the check for payment at the bottom of one of the stacks of papers in the employee's office.

Respondent's representatives indicated this had been the thirteenth error on this account in the past seven years. Based on this poor compliance history, Respondent had denied waiver of the penalty. Seven of the errors had occurred in the three years immediately prior to the period at issue. Respondent's representatives also pointed out that the return itself had been filed by the due date. It was the payment that was late.

Interest is assessed when taxes are not paid or underpaid to compensate the state for the time value of money. Interest is generally waived only in the event the Tax Commission, or Tax Commission employee error gave rise to the late payment or underpayment. There was no basis presented for waiver of interest.

DECISION AND ORDER

The fact that the prior delinquencies were due to error on the part of the principal owner of the business, while the newest delinquency was on the part of the employee hired to perform the accounts payable functions, although understandably frustrating to the principal owner, is not cause for waiver of the penalty considering the extensive history of the late filling and late payment for the business as a whole.

Based upon the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the penalty or interest associated with Petitioner's sales tax filing for the first quarter of 2007. 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.

Jane Phan
Administrative Law Judge

Appeal No. 07-0876

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: Failure to pay the balance due as a result of this order within thirty days from the date hereon, unless a party requests a Formal Hearing within this period, may result in an additional penalty.

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