

07-1003
Sales Tax
Signed 11/05/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

ORDER

Appeal No. 07-1003

Account No. #####

Tax Type: Sales Tax

Audit Period: 7/04-4/07

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE 1, Manager, Sales Tax Auditing
RESPONDENT REPRESENTATIVE 2, Assistant Director, Auditing

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 October 22, 2007. Petitioner is appealing interest issued with a sales tax audit for the period of July 1, 2004 through April 30, 2007. No penalties were assessed with the audit. Interest assessed with the audit was \$\$\$\$ and continues to accrue until the balance is paid. The Statutory Notice of Audit Change had been issued on July 27, 2007. Petitioner did not contest the additional tax assessed with the audit.

APPLICABLE LAW

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

At the hearing the representative for Petitioner explained that the accountant who prepared the returns for Petitioner had just made an unintentional calculation error. She asked that the interest be waived because Petitioner had not underreported the tax on purpose. Petitioner had relied on the accountant to prepare the returns.

The Division's representative indicated that the tax deficiency resulted from one schedule in the audit for unreportable taxable amounts. The sales tax had been collected but was not reported and remitted. It was the Division's position that the area of law on this point was very clear. The Division's representative pointed to Utah Admin. Rule R865-19S-16. Interest was assessed to the underpayment pursuant to Utah Code Sec. 59-1-402. The Division had not assessed any penalties in this matter.

Upon review of the information presented by the parties the Commission concludes there is no basis for waiver of interest. 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. In this matter the error was not on the part of the Tax Commission. The Commission would point out to Petitioner that the Division did not assess penalties in this matter, which they likely would have done had they concluded the omission was intentional.

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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 the sales tax audit issued against Petitioner for the period from July 2004 through April 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

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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 neither party requests a Formal Hearing, the balance due will become final thirty days from the date of this order. Failure to pay the balance due as a result of this order within the thirty days from the date hereon may result in an additional penalty. Petitioner should contact the Taxpayer Services Division to obtain an update of the interest or make payment arrangements at (801) 297-7703.

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