

08-1136
PENALTY & INTEREST
SIGNED 01-13-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER , Petitioner, vs. TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 08-1136 Account No. ##### Tax Type: Withholding - Penalty & Interest Tax period: October 2007 Judge: Jensen
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP, Representative for Petitioner

For Respondent: RESPONDENT REP 1, Waivers Unit, Taxpayer Services Division

RESPONDENT REP 2, Waivers Unit, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on September 9, 2008 in accordance with Utah Code Ann. §59-1-502.5. The above-named Petitioner (the "Taxpayer") is appealing penalties of \$\$\$\$ and interest of approximately \$\$\$\$ for the late payment of withholding tax for the filing period of October 2007.

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

The Taxpayer's representative explained that on November 19, 2007 the Taxpayer had filed an electronic return with an electronic payment for the October 2007 withholding tax period. The parties agree that this was a timely filing for the return and would have been a timely payment had the payment process completed. The parties also agree that the payment did not transfer as intended. Both the Taxpayer and the Division have looked into the reasons for the failure of the electronic transfer to fund. At one time, the

Division was concerned that there were not sufficient funds in the Taxpayer's account at the time of the payment. The Taxpayer reviewed bank records and determined that the bank account at issue had a balance of over \$\$\$\$\$ throughout the month of November 2007 and thus would have been more than sufficient to fund the \$\$\$\$\$ electronic payment. The parties agree that the most likely cause was an incorrect digit on the bank account number included in the electronic payment request. The Taxpayer's representative indicated that the Taxpayer received a confirmation number in connection with the electronic payment and did not know of the electronic transfer failure until the Division sent an underpayment notice on February 28, 2008. The Division agreed that the Taxpayer would have received a confirmation, but pointed out that the confirmation language indicates that it is subject to bank acceptance.

The Division found insufficient good cause to waive penalties because it was not presented with proof of events outside the Taxpayer's control that caused the late payment. The Division also considered the filing history for the Taxpayer. That filing history included a late filing or payments for the filing periods of January 2005, January 2006, and June 2007. The Taxpayer acknowledged filing problems in the past. A previous employee made errors and the Taxpayer replaced that individual to remedy the filing 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. Generally, the Commission requires events outside the control of a taxpayer to waive interest. In this case, it appears that the Taxpayer most likely made an error in an electronic payment request. While this would have been an error within the Taxpayer's control, it also appears to have been an error that crept into the process despite reasonable efforts by the Taxpayer to make an accurate filing. The Commission is mindful that penalties are in place to encourage taxpayers to make every reasonable effort to comply with timely filing and payment requirements. In this case, the Taxpayer made those reasonable efforts for the October 2007 tax filing. The Taxpayer does not have a perfect compliance record, but does not have a record that would rule out a waiver under the circumstances as presented by the parties. Because the Taxpayer has made reasonable compliance efforts including an employee change to prevent future errors, the Commission finds good cause for a penalty waiver in this case.

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, there was no allegation of Tax Commission error in causing the late payment for the Taxpayer's October 2007 withholding tax.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a

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waiver of penalties associated with the Taxpayer's October 2007 filing period for withholding tax. The Commission does not find good cause to waive interest for the same filing. 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 _____, 2008.

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 _____, 2008.

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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