

APPEAL # 25-666

TAX TYPE: PERSONAL PENALTY ASSESSMENT

TAX YEAR:2024

DATE SIGNED: 7/14/2026

COMMISSIONERS: J.VALENTINE, R.ROCKWELL, J.FRESQUES, AND J.DEEDS

---

BEFORE THE UTAH STATE TAX COMMISSION

---

|                             |                              |
|-----------------------------|------------------------------|
| TAXPAYER,                   | <b>INITIAL HEARING ORDER</b> |
| Petitioner,                 | Appeal No. 25-666            |
| v.                          | Account No: #####            |
| COLLECTIONS DIVISION OF THE | Tax Type: Personal Penalty   |
| UTAH STATE TAX COMMISSION,  | Assessment                   |
| Respondent.                 | Tax Year: 2024               |
|                             | Judge: Phan                  |

---

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER

For Respondent: RESPONDENT'S REP 1, Division Director, Collections  
Division

RESPONDENT'S REP 2, Tax Compliance Manager,  
Collections Division

RESPONDENT'S REP 3, Collections Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on March 2, 2026, for an Initial Hearing in accordance with Utah Code Ann. §59-1-302 and §59-1-502.5. Petitioner (“Taxpayer”) is appealing the personal nonpayment penalty assessment made for the unpaid sales, restaurant and withholding tax for the business BUSINESS 1. The unpaid taxes were for periods from DATE through DATE. The total amount of the personal nonpayment penalty originally imposed had been \$\$\$\$\$. The original notice of personal nonpayment penalty was issued on DATE. However, prior to the Initial Hearing, the Division issued a revised personal nonpayment penalty notice that reduced the amount to \$\$\$\$\$.

APPLICABLE LAW

Utah Law provides for a personal penalty assessment for a company's unpaid sales tax liabilities. It is imposed in Utah Code Ann. §59-1-302 and provides in pertinent part:

(1) This section applies to the following:

.....

(c) a tax under Chapter 10, Part 4, Withholding of Tax;

(d) a tax under Chapter 12, Sales and Use Tax Act;

.....

(2) (a) A person required to collect, truthfully account for, and pay over a tax listed in Subsection (1) who willfully fails to collect the tax, fails to truthfully account for and pay over the tax, or attempts in any manner to evade or defeat the tax or the payment of the tax, is liable for a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over.

(b) The penalty described in Subsection (2)(a) is in addition to other penalties provided by law.

(3) (a) If the commission determines in accordance with Subsection (2) that a person is liable for the penalty, the commission shall mail a notice of the proposed penalty to the person.

(b) The notice of proposed penalty shall: (i) set forth the basis of the assessment; and (ii) be mailed: (A) in accordance with Section 59-1-1404; and (B) to the person's last-known address.

(4) Upon receipt of the notice of proposed penalty, the person against whom the penalty is proposed may:

(a) pay the amount of the proposed penalty at the place and time stated in the notice; or

(b) proceed in accordance with the review procedures of Subsection (5). (5) A person against whom a penalty is proposed in accordance with Subsections (2) and (3) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.

.....

(7) (a) In a hearing before the commission and in a judicial review of the hearing, the commission and the court shall consider any inference and evidence that a person has willfully failed to collect, truthfully account for, or pay over a tax listed in Subsection (1).

(b) It is prima facie evidence that a person has willfully failed to collect, truthfully account for, or pay over a tax listed in Subsection (1) if the commission or a court finds that the person charged with the responsibility of collecting, accounting for, or paying over the taxes: (i) made a voluntary, conscious, and intentional decision to prefer other creditors over the state government or utilize the tax money for personal purposes; (ii) recklessly disregarded obvious or known risks that resulted in the failure to collect, truthfully account for, or pay over the tax; or (iii) failed to investigate or to correct mismanagement, having notice that the tax was not or is not being collected, accounted for, or paid over as provided by law.

(c) The commission or court is not required to find a bad motive or specific intent to defraud the government or deprive the government of revenue to establish willfulness under this section.

(d) If the commission determines that a person is liable for the penalty under Subsection (2), the commission shall assess the penalty and give notice and demand for payment in accordance with Section 59-1-1411.

#### DISCUSSION

In issuing the assessment against the Taxpayer, Respondent (the “Division”) determined that the Taxpayer was a person responsible for collecting and paying over the tax owed by BUSINESS 1, pursuant to Utah Code §59-1-302, and argued that the personal nonpayment penalty was appropriate for the unpaid sales tax, restaurant tax and withholding tax owed by BUSINESS 1, for the period from DATE through DATE. At the Initial Hearing, the Taxpayer asked that the personal nonpayment penalty against her be abated, or that the taxes be collected from the party she felt was responsible.

At the Initial Hearing, the Taxpayer explained that she was really just trying to help out a friend that could not get a bank account for the business. The Taxpayer explained that BUSINESS 1, had operated a coffee shop that also sold art on consignment. She stated that the business had been started by PERSON-1 (“PERSON-1”), PERSON-2 (“PERSON-2”) PERSON-3 and PERSON-4.<sup>1</sup> The Taxpayer explained that she had started to help them with their stock system, but PERSON-1 and PERSON-4 had wanted to walk away from the business. The Taxpayer explained that PERSON-2 was her friend and was not able to open a bank account for the business, so the Taxpayer opened the bank account for the business. The Taxpayer was the only signature on the bank account, but she stated that she gave PERSON-2 a signature stamp,

---

<sup>1</sup> PERSON-4’s last name was not provided.

and that PERSON-2 was the one actually managing and operating the business on a daily basis and was paying the bills using the checking account with the Taxpayer's signature stamp. The Taxpayer stated that she assumed that PERSON-2 was filing and paying taxes. The Taxpayer stated that the business did not have an outside accountant or CPA.

The Taxpayer explained that after the Division contacted her about unfiled returns and unpaid taxes, she got the returns filed for the periods DATE through DATE. She stated that there had been \$\$\$\$ in the bank account for the business, which could have paid the tax, but PERSON-2 had emptied out the account using the Taxpayer's signature stamp. The Taxpayer also explained that she had ended her ownership interest in the business and closed the business account in DATE. The Taxpayer stated that she has had nothing to do with the business since that time and eventually PERSON-2 closed the business. The Taxpayer said that she had numerous texts back and forth from PERSON-2, and PERSON-2 had said she would pay the tax, but she never did. There were no outstanding balances on the account since the third quarter of YEAR, after the Taxpayer became aware of the problem. The Taxpayer acknowledged that her name was the only name on the account, but asked that the taxes be collected from PERSON-2.

At the Initial Hearing, the Division's representatives explained that the sales, restaurant and withholding tax accounts for BUSINESS 1, had been opened in DATE. The Division stated that from the beginning, the accounts were opened by the Taxpayer as the principal and there was nobody else on the accounts. The Division's representatives stated that when the LLC had been registered with the Department of Commerce, the Taxpayer was the only member and only principal of the LLC. The Division's representatives stated that PERSON-1 had been listed as the registered agent for the business. However, PERSON-1 was removed as registered agent in DATE, and the Taxpayer, who was already the only member of the LLC, was added as the registered agent at that time. The Division also stated that when the TAP account was set up, it was only the Taxpayer who was on that account and it was the Taxpayer who had filed the returns for the business. The Division did not refute the Taxpayer's timeline, that it was not until after the Division had contacted the Taxpayer about unfiled returns and unpaid tax amounts, that the Taxpayer filed the returns. The Division pointed to Utah Code §59-1-302, which indicates that a person who is required to collect, truthfully account for and pay over a tax is liable for a personal nonpayment penalty when the tax goes unpaid. It was the Division's contention that the Taxpayer was a person responsible for collecting and paying over the taxes because she was the only person on the Utah tax accounts, and the only principal on the business. They also pointed out that she was the only person who could sign on the business checking account.

The Commission reviews the information provided by the parties at the Initial Hearing and considers the applicable law. Utah Code Ann. §59-1-302(2)(a) provides, “A person required to collect, truthfully account for, and pay over a tax listed in Subsection (1) who willfully fails to collect the tax, fails to truthfully account for and pay over the tax, or attempts in any manner to evade or defeat the tax or the payment of the tax, is liable for a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over.” In this matter, the Taxpayer was the only person on the tax accounts and the only principal of the business. Clearly she was a “person required to collect, truthfully account for, and pay over a tax,” a point that she really did not dispute, conceding at the Initial Hearing that she was the only person on the tax accounts.

The second requirement under the statute however, which is whether the Taxpayer “willfully” failed to collect the tax or “truthfully account for and pay over the tax” was not addressed or argued by the Division at the Initial Hearing. Utah Code Ann. §59-1-302(7)(a) states, “In a hearing before the commission and in a judicial review of the hearing, the commission and the court shall consider any inference and evidence that a person has willfully failed to collect, truthfully account for, or pay over a tax listed in Subsection (1).” Utah Code Ann. §59-1-302(7)(b) then provides, “It is prima facie evidence that a person has willfully failed to collect, truthfully account for, or pay over a tax listed in Subsection (1) if the commission or a court finds that the person charged with the responsibility of collecting, accounting for, or paying over the taxes: (i) made a voluntary, conscious, and intentional decision to prefer other creditors over the state government or utilize the tax money for personal purposes; (ii) recklessly disregarded obvious or known risks that resulted in the failure to collect, truthfully account for, or pay over the tax; or (iii) failed to investigate or to correct mismanagement, having notice that the tax was not or is not being collected, accounted for, or paid over as provided by law.”

What constitutes “willfully” failing to collect, truthfully account for or pay over a tax has been considered by the Utah Supreme Court. In *Utah State Tax Comm’n v. Stevenson*, 2006 UT 84, P16, the Court noted, “It is clear from the language of Utah Code section 59-1-302 that our legislature patterned the willfulness framework after the federal model. First, section 59-1-302(2), which establishes personal liability for willfulness, mirrors its federal counterpart, 26 U.S.C. §6672(a) (2000), almost entirely. Second, the three willfulness standards found in subsections 59-1-302(7)(b)(i)-(iii) were taken almost verbatim from well-developed federal case law.” The Court in *Stevenson* then stated, “By its express terms, section 59-1-302(7)(b)(ii) does not provide for strict liability, nor does it trigger liability for mere negligence. *Cf. Denbo v. United States*, 988 F.2d 1029, 1033 (10th Cir. 1993) (stating that “negligence does not give rise to . . . liability” under the federal willfulness scheme). Instead, the responsible party’s conduct must be ‘reckless[,]’ and

the risk of nonpayment must be 'obvious' or 'known.'” The Court further stated, “Courts applying the federal reckless disregard standard have generally found liability only where responsible parties had actual notice of facts evidencing a significant risk of nonpayment, such as a history of nonpayment on the part of the company or a deterioration in the company's financial management.” P25. In *Stevenson*, the Court concluded:

The cases holding a responsible person liable . . . based on reckless conduct generally fall into one of three distinct fact patterns. First, a responsible person may be held reckless if he relies on someone who is in control of the borrower's finances, *knowing* that this controlling person is unreliable. Second, courts have held that willful conduct also includes failure to investigate or to correct mismanagement, *after having notice* that trust fund taxes were not remitted to the government . . . Third, courts have held that a responsible person may . . . act willfully by paying other bills, *knowing of* arrearages on payment of . . . taxes.

. . .

We agree with this emphasis on actual notice. If a responsible party learns of facts that indicate a significant risk of noncompliance, he can then ascertain the current state of compliance, review management's actions, install safeguards, and take other steps to ensure compliance. If he fails to take commensurate action, his conduct can then be viewed as recklessness or gross negligence or, in other words, "a gross deviation from the standard of care that an ordinary person would exercise" in the given circumstances. P27-29.

Considering the Court's "emphasis on actual notice," notwithstanding that the Taxpayer was negligent by relying on a person who could not get a bank account to file tax returns and that the Taxpayer allowed this person to access the bank account using her signature stamp, without at least some monitoring or review, negligence alone is insufficient to support the imposition of a personal nonpayment penalty. It appears that as soon as the Taxpayer had actual notice of the nonpayment, which came from the Division, she took action, got returns filed and there was no further liability on the accounts. Given the facts presented at the Initial Hearing, the second requirement that the Taxpayer "willfully" failed to collect the tax or "truthfully account for and pay over the tax," was not met in this matter. The personal nonpayment penalty assessment against the Taxpayer for the taxes owed by BUSINESS 1, for the period from DATE through DATE, should, therefore, be abated.

Jane Phan  
Administrative Law Judge

#### DECISION AND ORDER

Based on the foregoing, the Commission abates the personal nonpayment penalty against

the Taxpayer for the period of DATE through DATE. 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, or emailed, 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

or emailed to:

[taxappeals@utah.gov](mailto:taxappeals@utah.gov)

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

DATED this \_\_\_\_ day of \_\_\_\_, 2026.

John L. Valentine  
Commission Chair

Rebecca L. Rockwell  
Commissioner

Jennifer N. Fresques  
Commissioner

John T. Deeds  
Commissioner

**Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.**