

APPEAL #25-1461

TAX TYPE: PENALTY AND INTEREST WAIVERS TOBACCO TAX

TAX YEAR: 2023 AND 2024

DATE SIGNED: 11/20/2025

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

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. SPECIAL SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 25-1461 Account No: ##### Tax Type: Penalty and/or Interest Waivers Tobacco Tax Tax Periods: 4th quarter 2023 4th quarter 2024 Judge: Nielson-Larios
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Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER

For Respondent: RESPONDENT’S REP-1, Special Services Division

I. STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 27, 2025, for an Initial Hearing in accordance with Utah Code Ann. § 59-1-502.5. Respondent (“Division”) issued a Waiver Decision dated MONTH DATE, YEAR(“Waiver Decision”), concerning the request of Petitioner (“Taxpayer”) for a waiver of the following late filing penalties based on the following filing information:

<u>Tax Period</u>	<u>Late Filing Penalty</u>	<u>Due Date</u>	<u>Filing Date</u>
4th quarter 2023	\$\$\$\$\$	DATE	DATE
4th quarter 2024	\$\$\$\$\$	DATE	DATE

No taxes are showing as outstanding, and no interest has accrued. Through the Waiver Decision, the Division denied the Taxpayer’s request for a waiver of the above penalties. The Taxpayer has appealed the Division’s Waiver Decision.

II. APPLICABLE LAW

Utah Code Ann. § 59-1-1417(1) provides, “In a proceeding before the commission, the burden of proof is on the petitioner [taxpayer] . . .”

Utah Code Ann. § 59-14-212 imposes a reporting requirement on “any manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or container of cigarettes imported to the United States.” Section 59-14-212 states the following:

- (1) Except as provided under Subsection (2), any manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or container of cigarettes imported to the United States shall provide to the commission the following as they pertain to the imported cigarettes:
 - (a) a copy of the importer's federal import permit;
 - (b) the customs form showing the tax information required by federal law;
 - (c) a statement signed under penalty of perjury by the manufacturer or importer that the manufacturer or importer has complied with:
 - (i) 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act, regarding warning labels and other package information; and
 - (ii) 15 U.S.C. 1335a of the Federal Cigarette Labeling and Advertising Act, regarding reporting of added ingredients;
 - (d) the name of the person from whom the person affixing the stamp received the cigarettes;
 - (e) the name of the person to whom the person affixing the stamp delivered the cigarettes, unless the person receiving the cigarettes was the ultimate consumer;
 - (f) the quantity of cigarettes in the package or container; and
 - (g) the brand and brand style of the cigarettes.
- (2) Subsection (1) does not apply to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations unless the cigarettes are brought back into the customs territory for resale within the customs territory.
- (3) The information under Subsection (1) shall be provided on a quarterly basis on forms specified by the agency.
- (4) A person who fails to comply with the reporting requirement or provides false or misleading information under Subsection (1):
 - (a) is guilty of a class B misdemeanor; and
 - (b) may be subject to:
 - (i) revocation or suspension of a license issued under Section 59-14-202; and
 - (ii) a civil penalty imposed by the commission in an amount not to exceed the greater of:
 - (A) 500% of the retail value of the cigarettes for which a report was not properly made; or
 - (B) \$5,000.
- (5) The information under Subsection (1) may be disclosed by the commission as provided under Subsection 59-1-403(4)(g).

Utah Code Ann. § 59-14-214 imposes a reporting requirement on “[e]ach manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to a package of cigarettes.” Section 59-14-214 states the following:

- (1) As used in this section, "nonparticipating manufacturer" means a tobacco product manufacturer, as defined in Section 59-22-202, that is not a participating manufacturer within the meaning of Subsection II(jj) of the Master Settlement Agreement, as defined in Section 59-22-202.
- (2) (a) There is levied an equity assessment, at the rate of 1.75 cents on each cigarette, for all cigarette packages of nonparticipating manufacturers to which a stamp is affixed as required under Section 59-14-205.
(b) The equity assessment imposed by this section is in addition to all other assessments, fees, and taxes levied under existing law.
(c) The equity assessment imposed by this section shall be paid by affixing a stamp in the manner and at the time described in Section 59-14-205.
(d) Except as otherwise provided in this section, the equity assessment shall be collected, paid, administered, and enforced in the same manner as the tax on cigarettes levied by Section 59-14-204.
- (3) The purposes of this equity assessment are:
 - (a) to recover health care costs to the state imposed by nonparticipating manufacturers;
 - (b) to prevent nonparticipating manufacturers from undermining the state's policy of reducing underage smoking by offering cigarettes for sale substantially below the prices of cigarettes of other manufacturers;
 - (c) to protect funding, which is reduced as a result of the growth of nonparticipating manufacturer cigarette sales, for programs funded in whole or in part by payments to the state under the Master Settlement Agreement, as defined in Section 59-22-202;
 - (d) to recoup settlement-payment revenue lost to the state as a result of nonparticipating manufacturer cigarette sales; and
 - (e) to fund enforcement and administration of:
 - (i) Chapter 14, Part 6, Tobacco Manufacturer Stamping Enforcement Provisions;
 - (ii) Sections 59-22-201 through 59-22-203, related to nonparticipating manufacturers; and
 - (iii) the equity assessment imposed by this section.
- (4) Each manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to a package of cigarettes, shall report quarterly to the commission for each place of business, the number and denominations of stamps affixed to individual packages of nonparticipating manufacturer cigarettes sold by the manufacturer, distributor, wholesaler, or retail dealer in the preceding quarter, including the manufacturer and brand family.
- (5) A person required to file a report under this section who fails to timely file the report, or who provides false or misleading information on, or in relation to, the report:
 - (a) is guilty of a class B misdemeanor; and
 - (b) is subject to:
 - (i) revocation or suspension of a license under Part 2, Cigarettes; and
 - (ii) a civil penalty, imposed by the commission, in an amount that does not exceed the greater of:

- (A) 500% of the retail value of the cigarettes for which an accurate report was not filed; or
- (B) \$5,000.

Utah Code Ann. § 59-14-103 provides the Commission with authority to reduce certain tobacco penalties, with the section stating the following in part:

The commission may, upon making a record of its actions, and upon reasonable cause shown, waive, reduce, or compromise any of the penalties or interest imposed under:

- (1) Subsection 59-14-212(4)(b)(ii);
- (2) Subsection 59-14-214(5)(b)(ii);

....

The Commission also has been granted the discretion to waive penalties imposed under Utah Code Ann. Title 59, Chapter 1, Part 4, Penalties, Interest, and Confidentiality of Information (“Part 4”). Utah Code Ann. § 59-1-401(14) provides, “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.”

The Commission has promulgated Utah Administrative Code Rule R861-1A-42 to provide additional guidance on the waiver of penalties imposed under Part 4. Administrative Rule R861-1A-42 states the following in part:

- (1) Procedure.
 - (a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:
[Conditions listed.]
-
- (3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
 - (a) Timely Mailing or Electronic Submission...
 - (b) Wrong Filing Place...
 - (c) Death or Serious Illness:
 - (i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.
 - (ii) With respect to a business, trust, or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.
 - (iii) The death or illness must have occurred on or immediately before the due date of the return.
 - (d) Unavoidable Absence...
 - (e) Disaster Relief...
 - (f) Reliance on Erroneous Tax Commission Information...
 - (g) Tax Commission Office Visit...
 - (h) Unobtainable Records...
 - (i) Reliance on Competent Tax Advisor...
 - (j) First Time Filer...
 - (k) Bank Error...

- (l) Compliance History:
 - (i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.
 - (ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.
- (m) Employee Embezzlement...
- (n) Recent Tax Law Change...
- (4) Other Considerations for Determining Reasonable Cause.
 - (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
 - (i) whether the commission had to take legal means to collect the taxes;
 - (ii) if the error is caught and corrected by the taxpayer;
 - (iii) the length of time between the event cited and the filing date;
 - (iv) typographical or other written errors; and
 - (v) other factors the commission deems appropriate.
 - (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
 - (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.
 - (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

III. DISCUSSION

This Discussion Section includes the following subsections:

- A. Explanation of penalty and interest amounts
- B. The Taxpayer's information and arguments
- C. The Division's information and arguments
- D. Analysis and conclusion

A. Explanation of penalty and interest amounts

The Taxpayer had a tobacco license. The Division asserted that the Taxpayer was required to timely file quarterly reports but did not do so. In its Response to Petition for Redetermination ("Response"), the Division indicated that the Taxpayer filed Forms TC-553 Tobacco Products Tax Return ("Forms TC-553") late. The Division included a copy of Tax Commission Publication 65 with its Response. According to Publication 65, a "stamper," "distributor," or "rolling machine operator" must file quarterly Forms TC-553, but a "retailer" or a "manufacturer" is not required to file Forms TC-553. In the Division's Response, the late-filing penalty is described as a "NF Penalty TC-557 RYO." The Division's Response also shows no taxes in connection with the Forms TC-553 and no interest imposed. In its Response, the Division asserted that the Tax Commission imposed the \$\$\$\$ per quarter late-filing penalties in accordance with § 59-14-212 and § 59-14-214.

Below, this Initial Hearing Order analyzes § 59-14-212 and § 59-14-214. Section 59-14-212 states the following in part:

- (1) Except as provided under Subsection (2), any manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 **affixes a stamp** to an individual package or container of cigarettes imported to the United States **shall provide** to the commission the following as they pertain to the imported cigarettes:
.....
- (3) The information under Subsection (1) shall be provided on a quarterly basis on forms specified by the agency.
- (4) A person who fails to comply with the reporting requirement or provides false or misleading information under Subsection (1):
.....
 - (b) may be subject to:
.....
 - (ii) a civil penalty imposed by the commission in an amount not to exceed the greater of:
 - (A) 500% of the retail value of the cigarettes for which a report was not properly made; or
 - (B) \$5,000.

(Emphasis added.) Section 59-14-214 states the following:

- (4) Each manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 **affixes a stamp** to a package of cigarettes, **shall report** quarterly to the commission for each place of business, the number and denominations of stamps affixed to individual packages of nonparticipating manufacturer cigarettes sold by the manufacturer, distributor, wholesaler, or retail dealer in the preceding quarter, including the manufacturer and brand family.
- (5) A person required to file a report under this section who fails to timely file the report, or who provides false or misleading information on, or in relation to, the report:
.....
 - (b) is subject to:
.....
 - (ii) a civil penalty, imposed by the commission, in an amount that does not exceed the greater of:
 - (A) 500% of the retail value of the cigarettes for which an accurate report was not filed; or
 - (B) \$5,000.

(Emphasis added.) Both § 59-14-212 and § 59-14-214 impose the reporting requirement on certain manufacturers, distributors, wholesalers, or retail dealers. Both § 59-14-212 and § 59-14-214 limit those manufacturers, distributors, wholesalers, or retail dealers to those who “affix[ed] a stamp” to a package or container of cigarettes. Those manufacturers, distributors, wholesalers, or retail dealers with a reporting requirement are subject to a civil penalty if they fail to comply with the reporting requirements.

The Taxpayer did not quote or apply the language of § 59-14-212 or § 59-14-214, or argue that she was not subject to the reporting requirements of § 59-14-212 or § 59-14-214. However, she explained

that she obtained the tobacco license during the COVID-19 pandemic but never used it. In response to questions, she explained that she never obtained inventory, she never advertised, she never made a tobacco sale, and she never received compensation. She explained that, instead, she graduated from school and started working in her field of study. She also explained that she had difficulty understanding the tobacco requirements and had called the Tax Commission multiple times for assistance. She explained that she had incorrectly assumed that her tobacco license had ended and that she closed it in MONTH YEAR, with the help of a Tax Commission agent, when she learned that she had been wrong.

The Division quoted the language of § 59-14-212 and § 59-14-214 in its Response, but it did not analyze whether the Taxpayer had a reporting requirement under those sections. The Commission notes that § 59-14-212 and § 59-14-214 limit the reporting requirement to those who “affix[ed] a stamp” to a package or container of cigarettes. These provisions were not discussed during the Initial Hearing. The Division explained that the Taxpayer’s first quarterly return was 3rd quarter YEAR. The Division also explained that from 3rd quarter YEAR to 4th quarter 2024, the Taxpayer’s returns reported no tax. However, the Division also said that it had limited familiarity with the tobacco taxes, so the Division had submitted a copy of Tax Commission Publication 65 to assist in the understanding of the tobacco taxes.

The information provided during the hearing shows that more likely than not the Taxpayer never “affix[ed] a stamp” to a package or container of cigarettes. Thus, the information also shows that the Taxpayer most likely did not have a reporting requirement under § 59-14-212 or § 59-14-214. Without a reporting requirement, the penalties found in § 59-14-212(4)(b)(ii) and § 59-14-214(5)(b)(ii) cannot apply. Thus, the information provided for the Initial Hearing shows that the Taxpayer most likely cannot be subject to the late-filing penalties for 4th quarter 2023 and 4th quarter 2024.

Therefore, the penalties should be abated in this case.

B. The Taxpayer’s information and arguments

During the Initial Hearing, the Taxpayer asked for abatement of the tobacco penalties for multiple reasons in addition to having never made any money with the tobacco license.

She explained that she has been moving often, to avoid a domestic violence situation and also for her occupation. She provided documents that she said supported her explanation. Additionally, she said that she was unsure whether she timely received the notices from the Tax Commission, based on her use of multiple addresses. She said that when she received the Tax Commission notices, she made efforts to “be on top of things” and to contact the Tax Commission to assist her.

Furthermore, she explained that she injured her back and neck while on the job around MONTH DATE, 2024, that her injury continued for ##### months to a year, and that she had about a year of physical therapy for that injury. She submitted a document titled, “Sedgwich LV Incident #4...,” which stated in part the following:

Last Day Worked: DATE
First Day Absent: DATE
Estimated Return to Work Date: DATE
Intermittent or Continuous: Continuous

Thank you for reporting this claim to Sedgwich. Below you will find important details about your claim and next steps in the process.

....

The Taxpayer said she had additional documentation showing that she could not return to work on MONTH DATE, 2024, because of her injury.

The Taxpayer explained other reasons that showed her financial hardship. She said that she had been hospitalized for a different health matter on MONTH DATE, YEAR, that her family receives STATE-1 state benefits based on their low income, and that she is also subject to a garnishment from a division of the State of STATE-1 in connection with some benefits that STATE-1 had overpaid. She explained that paying the Utah late filing penalties could leave her and her ##### children without funds for necessary items like food and utilities.

C. The Division’s information and arguments

The Division asserted that the penalties were correctly imposed in accordance with the Utah Code and that waivers of penalties are granted in accordance with the Utah Code, Utah Administrative Rule R861-1A-42, and Tax Commission Publication 17. According to its Response, the Division also considered § 59-14-103 in reaching its Waiver Decision.¹

The Division asserted that when the Taxpayer filed for the tobacco license, the Tax Commission gave her information about the filing requirements. The Division explained that the Taxpayer had kept her

¹ Utah Code Ann. § 59-1-401(14) does not apply in this case. Subsection 59-1-401(14) grants the Commission authority to waive, reduce, or compromise any of the penalties or interest "imposed under this part." "[T]his part" is Utah Code Ann. Title 59, Chapter 1, Part 4 ("Part 4"). However, the penalties in this case were not imposed under Part 4. Instead, the penalties in this case were imposed under Utah Code Ann. Title 59, Chapter 14, Part 2, specifically § 59-14-212 or § 59-14-214. Thus, the authority granted by § 59-1-401(14) does not extend to the penalties at issue in this case.

Furthermore, Administrative Rule R861-1A-42 does not apply in this case. This rule was enacted pursuant to Utah Code Ann. § 59-1-401, as seen by its title and also by R861-1A-42(1)(a), which states, in part, that "[a] taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401..."

Based on the above explanation, the Commission is not bound by Administrative Rule R861-1A-42 for the penalties at issue in this case. Instead, the Commission has been given discretionary authority to waive, reduce, or compromise the penalties under § 59-14-103. The Commission notes that, in prior, unrelated circumstances, the Commission has found Administrative Rule R861-1A-42 to be *instructive*, even though not applicable, in cases in which a waiver was at issue for penalties properly imposed under a part other than Part 4.

Ultimately, this Initial Hearing Order concludes that the penalties at issue in this case were not properly imposed, so this order *abates* the penalties rather than waives them.

license open and that the Tax Commission had issued 22 failure to file notices. The Division stated that the notices had been mailed to the Taxpayer's last-known address on the records of the Tax Commission in accordance with Utah Code Ann. § 59-1-1404. The Division asserted that the Taxpayer should have understood the quarterly filing requirements and that the Taxpayer had received a prior Waiver Decision on MONTH DATE, 2024, waiving the late filing penalties for 1st, 2nd, and 3rd quarters of 2024. The Division noted that "ignorance of the law, carelessness, or forgetfulness" are not criteria supporting a waiver of a penalty (*see* Utah Administrative Rule R861-1A-42(4)(c)).

The Division explained that the Taxpayer had not asserted in her original waiver request that the criterion of death or serious illness had applied to her situation. The Division asserted that the information provided for the Initial Hearing did not show that the Taxpayer had a serious illness on or immediately before the filing due dates for 4th quarter 2023 or 4th quarter 2024.

The Division also explained that the possible negative impact of the penalty on the Taxpayer's family cannot be considered when determining reasonable cause for a waiver of a penalty. The Division noted that financial hardship is not a criterion considered when determining reasonable cause for a waiver of a penalty.

D. Analysis and conclusion

This order finds that the Taxpayer most likely never "affix[ed] a stamp" to a package or container of cigarettes. Thus, the Taxpayer most likely did not have a reporting requirement under § 59-14-212 or § 59-14-214, and therefore, could not be subject to the penalties found in § 59-14-212(4)(b)(ii) or § 59-14-214(5)(b)(ii). Therefore, the penalties should be abated in this case.

Aimee Nielson-Larios
Administrative Law Judge

IV. DECISION AND ORDER

Based on the foregoing, the Commission abates the penalties assessed for 4th quarter 2023 and 4th quarter 2024. 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

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

DATED this _____ day of _____, 2025.

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.