

06-1620  
Penalty & Interest  
Signed 07/10/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No. 06-1620
v.	)	
	)	Account No. #####
TAXPAYER SERVICES DIVISION,	)	Tax Period: 2004
UTAH STATE TAX COMMISSION,	)	Tax Type: Penalty & Interest
	)	
Respondent.	)	Presiding: Jensen

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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Waivers Unit, Taxpayer Services  
Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on April 16, 2007 in accordance with Utah Code Ann. §59-1-502.5. Petitioner is appealing interest of approximately \$\$\$\$ for the late payment of income tax for the filing period of 2004.

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

Petitioner explained that when he filed his 2004 tax return, his calculations showed that he owed \$\$\$\$ at the time of the filing. He enclosed a check for that amount and filed his return. The Tax Commission received the Petitioner's 2004 personal return along with the \$\$\$\$ payment, but recalculated the return and sent a \$\$\$\$ refund to Petitioner. The letter accompanying

Appeal No. 06-1620

the \$\$\$\$ refund indicated that the reason for the refund was the recalculation. Although a tax professional had completed the 2004 return, Petitioner was of the understanding that the state was right and that his tax professional had made an error.

On October 12, 2006, the Auditing Division of the Tax Commission completed an audit and determined that the \$\$\$\$ refund had been made in error. Accordingly, it asked Petitioner to repay the \$\$\$\$ plus a penalty of \$\$\$\$, and interest at the statutory rate. On November 12, 2006, Petitioner paid the tax amount and requested waiver of the penalty and interest. The Taxpayer Services Division waived the \$\$\$\$ penalty but denied waiver of interest on the basis that Petitioner had use of funds that rightfully should have remained with the state and that Petitioner should have discovered the Commission's error and thus should not have cashed the \$\$\$\$ refund check.

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. Although the criteria for waiving interest are more stringent than for waiving penalties, Commission error is a reason that can provide good cause for a waiver of interest. In this case, Commission error appears to be the cause of a state refund. While Petitioner might have discovered that the refund was in error, he did not act unreasonably in relying on a letter indicating that the state had recalculated his return resulting in a refund.

#### DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the interest associated with the 2004 tax year in the amount of \$\$\$\$\$. 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

Appeal No. 06-1620

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.

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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 \_\_\_\_\_, 2007.

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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