

04-1192  
Audit  
Signed 01/18/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,	)	
	)	<b>ORDER</b>
Petitioners,	)	
	)	Appeal No. 04-1192
v.	)	
	)	Account No. #####
	)	#####
AUDITING DIVISION OF THE	)	Audit Period: 1999
UTAH STATE TAX COMMISSION,	)	Tax Type: Income
	)	
Respondent.	)	Presiding: Robinson

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**Presiding:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioners: PETITIONER 1, via telephone  
For Respondent: RESPONDENT REPRESENTATIVE 1, Auditing Division  
RESPONDENT REPRESENTATIVE 2, Auditing Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on December 13, 2004, pursuant to Utah Code Ann. §59-1-502.5. Petitioners request a waiver of interest assessed by the Respondent.

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(10). If the IRS audit makes a change in a taxpayer's net income on his or her federal return, the taxpayer has ninety days after the

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final determination of that change in which to file a copy of the amended federal return and an amended state return reflecting the changes in the federal return. Utah Code Annotated §59-10-536(5)(a).

#### DISCUSSION

Petitioners request waiver of interest. The IRS conducted an audit of Petitioners' 1999 federal income tax return. The IRS made a correction to Petitioners' 1999 return. Apparently, Petitioners did not report some Social Security income in their return.

Following receipt and agreement with the amended federal return, Petitioners had a duty to file an amended state return within ninety days. They did not.

Respondent received information from the IRS from a tape match. It takes one to two years to acquire the information. After acquisition of the data, it is processed on a random basis.

On September 14, 2004, Respondent sent a statutory notice of audit change to Petitioners. Petitioners acknowledged the error and paid the tax owed. Petitioners are retired, living on "a meager retirement and Social Security." They request a waiver of the interest on the grounds paying would create a hardship for them.

#### DECISION AND ORDER

Interest is assessed by statute and compensates the State for the time value of money. The statute charges interest to the taxpayer at the same rate charged to the Commission in the case where the State is required to pay a refund to taxpayer, plus interest.

Interest is generally waived only in the event an error on the part of the Tax Commission or Tax Commission employee caused or contributed to the late filing or underpayment. In this matter, the underpayment was the result of an error made by Petitioners in preparing their original 1999 income tax

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return. In addition, Petitioners failed to timely file an amended State return after the IRS finalized its audit.

Based upon the foregoing, the Commission finds that Petitioners have not established sufficient cause to justify a waiver of the interest assessed relating to the audit deficiency for Petitioners' 1999 Utah Income Tax. Petitioners are liable for payment of the interest accrued. 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. Additionally, once the hearing process has ended, whether by failure to appeal or reaching the end of the appellate process, Petitioners may contact the Taxpayer Services Division regarding payment arrangements. They may discuss issues such as hardship, and a payment schedule.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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R. Spencer Robinson  
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 \_\_\_\_\_, 2005.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

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