

05-0434  
Audit  
Signed 10/25/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Petitioner,	)	<b>AND FINAL DECISION</b>
	)	
v.	)	Appeal No. 05-0434
	)	Account No. #####
AUDITING DIVISION OF THE	)	
UTAH STATE TAX COMMISSION,	)	Tax Type: Income Penalty & Interest
COMMISSION,	)	Tax Years: 1999 – 2001
	)	
Respondent.	)	Judge: Jensen

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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, from the Auditing Division  
RESPONDENT REPRESENTATIVE 2, Assistant Utah Attorney  
General

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 6, 2006. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is income tax.
2. The periods in question are tax years 1999, 2000, and 2001.
3. The Petitioner disputes the application of penalties and interest for the tax years in

question, but does not dispute the taxes as calculated by the Division nor does he dispute the Division's calculations regarding interest and penalties.

4. For tax years 1998 through 2005, the Petitioner had his taxes prepared at COMPANY in CITY Utah.

5. The Petitioner relied on advice from EMPLOYEE at COMPANY that no Utah tax return was necessary for tax years 1999, 2000, and 2001 because the Petitioner's "tax home was in STATE."

6. It was reasonable for the Petitioner to rely on the advice of EMPLOYEE because the need for the Petitioner to pay and file Utah taxes would not have been clear to one without training or experience in tax matters.

7. That EMPLOYEE provided the above-cited advice and that the advice was erroneous were confirmed by the current owner of the COMPANY franchise in a letter dated March 31 2006.

8. The March 31 2006 letter from the current owner of the COMPANY was received as evidence at the Formal Hearing in this matter but was not available at the Initial Hearing.

#### 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).

#### CONCLUSIONS OF LAW

The Petitioner's reliance on a competent tax adviser was reasonable and is just cause

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for a waiver of penalties for the tax periods at issue. See Tax Commission Publication 17. Because there is no evidence of Tax Commission error as is generally required to support a waiver of interest, there is not sufficient good cause to waive interest in this matter.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that sufficient cause been shown to justify a waiver of the penalties, but not the interest, associated with the Petitioner's Utah state tax returns for tax years 1999, 2000, and 2001. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
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 \_\_\_\_\_, 2006.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a

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Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

CDJ/05-0434.fof