

05-1695  
Audit  
Signed 03/07/2006

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	05-1695
v.	)		
	)	Account No.	#####
TAXPAYER SERVICES DIVISION,	)		
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income Tax /
	)		Penalty & Interest
Respondent.	)	Presiding:	Jensen

---

**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, from the Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on January 18, 2006, in accordance with Utah Code Ann. §59-1-502.5. Petitioner is appealing penalties totaling \$\$\$\$ and interest of approximately \$\$\$\$ assessed for the late payment of state income tax for the 2004 tax year. The petitioner explained that for the 2004 tax year, he computed his taxes with the aid of ( X ), an online tax service. Petitioner has used ( X ) or similar products for many years and generally relies on computer tax programs to both lead him through the tax preparation process and to catch errors from the incorrect entry of numbers. Petitioner indicated that he might well have incorrectly entered numbers into the ( X ) program. ( X ) may have had a software problem, but Petitioner indicated that he has no way of knowing or proving that. Even if the mistake was his own,

Appeal No. 05-1695

Petitioner is certain that the ( X ) program did not show an error message that the Petitioner has come to expect with computer tax programs.

The Division indicated that it discovered the underpayment in the petitioner's 2004 tax return and sent the Petitioner a letter on August 17, 2005 explaining the underpayment and giving the Petitioner until September 17, 2005 to pay the balance due. The letter indicated that the Petitioner would need to pay by the September 17 due date to avoid a late payment penalty and additional interest. The Division was unable to produce a copy of the August 17, 2005 letter. Instead, the Division produced a copy of a sample letter like the one it sent on August 17, 2005. The Division representative explained the letter was a form letter and that the Division's system does not save a complete copy of the letter. Rather, it saves a field indicating the name and address of the addressee as well as the financial data included in the letter. When the Division received no response, it sent a second letter October 14, 2005. The second notice added penalties that were not included with the first notice. Petitioner agreed that he owed the tax in question and paid it on October 26, 2005.

The Division also reviewed the Petitioner's compliance history. The Petitioner was current for all filing years before 2004 except the 2003 tax year. Petitioner timely filed his 2003 return but set up a payment plan of \$\$\$\$ per month for his 2003 tax obligations. The Division reported that Petitioner's first payment on this agreement was in July 2004 and that his final payment was in April 2005.

Petitioner explained that his late payment for the 2003 tax year was due to an extended period of unemployment. Petitioner neither requested nor received a waiver of penalties

Appeal No. 05-1695

and interest for the 2003 tax year. With regard to the Division's August 17 2005 letter, Petitioner stated that he does not recall receiving the letter and therefore did not receive it or the letter was lost in his home before he had a chance to read it. He did receive the second notice letter mailed on October 14, 2005 and notes that he made payment less than two weeks after its receipt.

#### 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

The Petitioner agrees that the assessment imposed by the Division is correct, but due to the circumstances involving his problem with the ( X ) program, he asks the Commission for whatever relief he may receive. While the Commission does not have authority to waive legally due income tax, it does have authority to waive penalties and interest "upon reasonable cause shown," pursuant to Section 59-1-401(11).

"Reasonable cause" to waive interest is limited to circumstances where the Commission contributed to the delinquency at issue. Because the Commission was not responsible for the income tax delinquencies, sufficient reasonable cause to waive the interest in this matter does not exist. Waiver of penalties, however, is appropriate not only when the Commission has made an error, but also, among other reasons, when the error is due to reliance on competent tax advice. See Tax Commission Publication 17, Waivers – Reasonable Cause (revised 04/04).

The Petitioner relied on tax advice from his online tax provider in two ways. First, the Petitioner relied on the system to prompt him and give guidance regarding the correct input of

Appeal No. 05-1695

numbers and to produce correct tax filings on the basis of these numbers. Second, he relied on the online provider to catch errors from incorrectly inputting data. The Petitioner acknowledged that the ( X ) program may have computed the return correctly and that he may have been to one who made the mistake. If it was the Petitioner making the error, there is still enough reliance on competent tax advice if the Petitioner's compliance history otherwise supports a penalty waiver.

The Petitioner's pre-2003 compliance history does support a waiver. The 2003 late payment hurts the Petitioner's cause. However, the Tax Commission recognizes that the Petitioner did do all that he could for the 2003 year by filing on time and making and keeping payment arrangements. On this basis, the Tax Commission finds reasonable basis to waive the penalty applied to the Petitioner's 2004 Utah state income tax return.

#### DECISION AND ORDER

Although the Division's assessment is correct, the Petitioner has shown sufficient reasonable cause for the Commission to waive the penalties at issue. For this reason, the Commission waives the failure to pay penalty assessed by the Division, but sustains the Division's assessment of additional tax and interest. 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:

Appeal No. 05-1695

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.

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

---

Clinton D. 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

Palmer DePaulis  
Commissioner

Marc B. Johnson  
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.

CDJ/05-1695.int