

06-0378  
Audit  
Signed 12/29/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No. 06-0378
v.	)	
	)	Account No. #####
AUDITING DIVISION,	)	
UTAH STATE TAX COMMISSION,	)	Tax Type: Income - Penalty & Interest
	)	
Respondent.	)	Presiding: Jensen

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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Manager, Income Tax Auditing  
RESPONDENT REPRESENTATIVE 2, Auditing Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on June 14, 2006. The Auditing Division of the Utah Tax Commission (the "Division") assessed additional taxes, interest, and penalty to the Petitioner's 2002 state tax return. The Petitioner agrees that he owes the additional taxes reflected in the audit. The Petitioner explained that the reason that he has no dispute with the audit is that it matches exactly the bottom line reached the 2002 tax return that he timely filed with the state. As proof of this, the Petitioner has provided a photocopy of his 2002 Utah Individual Income Tax Return as he filed it. Because he filed a correct tax return and made no errors that led to the audit, the Petitioner disputes the

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imposition of any interest or penalties assessed with the audit.

At hearing, the Division confirmed that the 2002 tax return copy filed by the Petitioner matches its audit results. The Division representatives explained that the copy of the return processed by the Commission was missing a page. Both at hearing and in correspondence provided after the hearing, the Division confirmed that when the Processing Division has a tax return missing a page, it will make a best effort to process the return on the basis of the information that it has. In this case, it finished the return on the basis of the first page of the return and the W2 forms attached to the return. This resulted in an understatement of taxes due when compared to both the results of the audit and the Petitioner's copy of his return.

#### 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

Whether the Commission waives the interest and penalties in this case depends on whether it is more likely that the taxpayer filed a return with a missing page or whether the taxpayer filed a complete return that lost a page in processing. The Petitioner is entitled to the waiver if it appears that it was Tax Commission error in losing a page of a return that led to the underpayment of the Petitioner's 2002 state income taxes. Weighing the facts before it, the Commission finds credible the Petitioner's testimony that he filed a complete 2002 tax return. This is particularly true given the copy of the 2002 return as provided by the Petitioner. On this basis, there is reasonable basis to conclude that the missing page of the Petitioner's 2002 state tax return was lost in

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processing. This would be a Commission error, which is reasonable cause to waive the penalty and interest portion of the 2002 audit.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the interest and penalties associated with the Petitioner's 2002 state tax return. This waiver does not affect the taxes as determined in the audit, which the parties agree are correct. If the Petitioner has not paid these additional taxes by the date of this decision, he will need to pay them within 30 days of the date on this decision to avoid a non-payment penalty. 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.

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

\_\_\_\_\_  
Clinton Jensen  
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 \_\_\_\_\_, 2006.

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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