

06-0467  
Audit  
Signed 08/28/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	06-0467
v.	)		
	)	Account No.	#####
AUDITING DIVISION OF THE	)		
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income
	)		
Respondent.	)	Judge:	Phan

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**Presiding:**  
Jane Phan, Administrative Law Judge

**Appearances:**  
For Petitioner:    PETITIONER 1  
                    PETITIONER REPRESENTATIVE, CPA  
For Respondent:  RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
                    RESPONDENT REPRESENTATIVE 2, Manager, Income Tax Auditing  
                    RESPONDENT REPRESENTATIVE 3, Auditor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on August 16, 2006. It had originally been scheduled for a Telephone Status Conference, but was converted to the Initial Hearing, based on Petitioner's position that the tax amount was no longer at issue. Petitioner was now contesting only the penalties and interest assessed with the audit for the tax year 2002. The Statutory Notice of Estimated Income Tax was issued by the Division on April 13, 2006. The penalties assessed with the audit were a 10% failure to file timely penalty and a 10% failure to pay timely penalty, which totaled \$\$\$\$\$. See Utah Code Sec. 59-1-401. Interest assessed with the audit was \$\$\$\$\$ and continues to accrue on the portion of the balance that is unpaid.

APPLICABLE LAW

Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part. Utah Code Sec. 59-1-401(11).

DISCUSSION

Petitioners were not residents of Utah for tax purposes in 2002 or prior years. Petitioner explained that he was a limited partner in a company that had issued him a K-1 for tax year 2002. The K-1 income was less than 10% of Petitioners total income. Petitioner indicates that based on the K-1 they thought the income was taxable to STATE and not Utah. Petitioner explains that he filed and paid the tax in STATE thinking that he was filing correct returns. Later the company was audited and the determination made that the income for which Petitioners had paid tax in STATE was actually taxable to Utah. After which Respondent issued the audit deficiency against Petitioners. Petitioners have since filed a Utah return and paid an amount equal to the tax.

Petitioner explains that he thought he was filing the original return correctly and paying the tax to STATE based on the K-1 he had received. He indicates he did not understand that he had received income taxable to Utah. Additionally, Respondent acknowledged that Petitioner would have been considered a first time filer in Utah for tax year 2002, as he had not filed returns in this state previously. Petitioner also asks that the interest be waived. He points out that he did not retain the use of the money, because he paid it to STATE. He did receive a refund of some of this amount from STATE and indicates that they did not pay him interest on the refund.

Respondent's representative indicated that interest is assessed when taxes are not paid or are underpaid to compensate the state for the time value of money. In this situation Petitioner had erred and the taxes should have been paid to Utah originally. Interest is generally waived only in the event Tax Commission,

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or Tax Commission employee error gave rise to the late payment or underpayment and there was no showing of this type of error.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient reasonable cause has been shown to justify a waiver of the penalties associated with Petitioner's Utah individual income tax for tax year 2002. Sufficient cause has not been shown for waiver of the 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:

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.

\_\_\_\_\_  
Jane Phan  
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

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