

06-1012  
Audit  
Signed 01/26/2007

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	06-1012
v.	)		
	)	Account No.	#####
AUDITING DIVISION OF	)		
THE UTAH STATE TAX	)	Audit Period:	2003
COMMISSION,	)	Tax Type:	Income Tax
	)		
Respondent.	)	Judge:	Robinson

---

**Presiding:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioners: PETITIONER, *pro se*, via telephone

For Respondent: RESPONDENT REPRESENTATIVE, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on October 2, 2006 pursuant to the provisions of Utah Code Ann. §59-1-502.5.

Respondent sent Petitioner a Notice of Audit Change, notifying him that an audit had determined he made an error on his Utah income tax return. Specifically, the audit found Petitioner had not added back on line five of his Utah return the state taxes he claimed as an itemized deduction on his federal return. Petitioner filed a Petition for Redetermination on July 21, 2006. He paid the tax due. He also paid the interest, in the amount of \$\$\$\$\$, which he requests be refunded or be used as a credit.

Petitioner bases his request on the time it took for him to receive notice of the error. He agrees he was given a refund in error. He attributes the delay in notifying him of the error to the Commission.

Respondent opposed this request. Respondent argued Petitioner made an error on his return. Respondent discovered the error when it received information from the IRS and compared it with the information on Petitioner's Utah tax return.

APPLICABLE LAW

59-10-114. Additions to and subtractions from federal taxable income of an individual.

(1) There shall be added to federal taxable income of a resident or nonresident individual:

(a) the amount of any income tax imposed by this or any predecessor Utah individual income tax law and the amount of any income tax imposed by the laws of another state, the District of Columbia, or a possession of the United States, to the extent deducted from adjusted gross income in determining federal taxable income;

59-10-537. Interest on underpayment, nonpayment or extension of time for payment of tax.

(1) If any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the rate and in the manner prescribed in Section 59-1-402 shall be paid. Interest under this subsection may not be paid if the amount thereof is less than \$1. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(2) Where a deficiency or any interest or additional amounts assessed in connection therewith under Section 59-10-525 or under Subsection (1), or an addition to the tax in case of delinquency provided for in Section 59-10-539 is not paid in full within ten days from the date of notice and demand from the commission, there shall be collected as part of the tax, interest at the rate and in the manner prescribed in Section 59-1-402 from the date of such notice and demand until it is paid.

(3) If the time for payment of the amount determined as the tax by the taxpayer is extended under the authority of Section 59-10-522, there shall be collected as a part of such amount, interest thereon at the rate and in the manner prescribed in Section 59-1-402.

Utah Code Ann. §59-1-401(11) “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.”

DISCUSSION

There is no evidence that Petitioner relied on erroneous advice from a Tax Commission employee. The Petitioner had the time value of the money through no fault of the Commission. In essence, Petitioner is requesting a refund of the interest because of the time it took the Commission to discover his error.

DECISION AND ORDER

Petitioner is responsible for payment of the interest. His request for a waiver of the interest is denied. 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 \_\_\_\_\_, 2007.

\_\_\_\_\_  
R. Spencer Robinson  
Administrative Law Judge

Appeal No. 06-1012

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 \_\_\_\_\_, 2007.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

RSR/06-1012.int.doc