

06-1045  
Income  
Signed 06/12/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	06-1045
v.	)		
	)	Account No.	#####
AUDITING DIVISION OF THE	)	Tax Years:	2002 & 2003
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income
	)		
Respondent.	)	Judge:	Phan

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

**Appearances:**  
For Petitioner: PETITIONER,  
For Respondent: RESPONDENT REPRESENTATIVE, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5 on June 4, 2007. The matter had been scheduled for a Telephone Status Conference and was converted to an Initial Hearing. Petitioner had originally filed an appeal of audit deficiencies of income tax, penalties and interest for tax years 2002 and 2003. As of the date of the hearing the 2003-year had been resolved and Petitioner had filed a return for the 2002 year, which had been accepted and posted over the audit. Respondent had adjusted the tax, interest and penalties for 2002 based on the tax amount Petitioner claimed on the return. The issue remaining was the penalties assessed for the 2002 tax year pursuant to Utah Code Sec. 59-1-401. The penalties were 10% failure to file and 10% failure to pay penalties totaling \$\$\$\$\$.

APPLICABLE LAW

The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return. (b) This Subsection (1) does not

apply to amended returns. Utah Code Sec. 59-1-401(1).

The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for (a) failure to pay any tax, as reported on a timely filed return; (b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a). Utah Code Sec. 59-1-401(2).

Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received. Utah Code Sec. 59-1-402 (5).

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

It was Petitioner's position that although she had moved from Utah by March of 2003, she had returned to Utah to have her taxes prepared for the 2002 tax year and that she had mailed the returns in with a check for payment of the taxes prior to the April 15 deadline. She does not know why the return was never received or processed by the Tax Commission. She indicates that later, after she learned that the Tax Commission did not have her return she had asked her tax preparer to hand deliver the return to the Tax Commission and it was her understanding that he had done so.

Respondent's representative indicated that the penalties had been assessed pursuant to statute. He did acknowledge that Petitioner had a good account history prior to 2002 as there had been no other penalties assessed.

Interest is assessed when taxes are not paid or underpaid to compensate the state for the time

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value of money. Petitioner would have continued to have the use of the funds from the time the tax was due until it is eventually paid.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the penalties assessed with Petitioner's individual income tax for tax year 2002. Insufficient cause was shown for waiver of the interest for 2002 and the tax amount has been adjusted to the amount that Petitioner claimed on her return. It is so ordered. In addition as the issues have been resolved for tax year 2003, the appeal for that year is dismissed.

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.

\_\_\_\_\_  
Jane Phan  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

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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

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

*JKP/06-1045.doc*