

06-1162  
Audit  
Signed 12/19/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioners,	)		
	)	Appeal No.	06-1162
v.	)		
	)	Account No.	#####-1
AUDITING DIVISION OF THE	)		#####-2
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 1, Manager, Income Tax Auditing  
RESPONDENT REPRESENTATIVE 2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on December 4, 2006. It had originally been scheduled for a Status Conference but the conference was converted to the Initial Hearing. Petitioner had originally filed an appeal of an audit assessment of additional Utah individual income tax and interest for tax year 2003. Upon discussion Petitioner indicated that she would pay the tax but wished to contest the interest. The amount of the interest at the time the Statutory Notice of Audit Change had been issued on August 30, 2006, had been \$\$\$\$ and continues to accrue on the unpaid balance. No penalties were assessed.

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-

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401(11).

### DISCUSSION

Petitioner explains that she had been unaware that she owed additional taxes for the 2003 tax year until she received the notice of the audit in August 2006. She felt she should not be charged interest from the time the tax and return was due until she received the audit notice because she had no idea that additional taxes were owed for that year. She had filed the 2003 return jointly with her spouse. Her spouse that had prepared the return and she did not know that errors had been made. Her spouse had died suddenly in April 2006. Petitioner indicated that she now lives on a small fixed income and repayment of the tax and interest would be a hardship for her.

Respondent's representative explained that interest is imposed based on the statutory requirement and is to compensate that state for the time value of money. See Utah Code Sec. 59-10-537(1). Interest is generally only waived in the event an error on the part of the Tax Commission or Tax Commission employee caused the original underpayment. There was no such error in this instance.

### DECISION AND ORDER

Upon review of the facts and arguments of the parties, the Commission would acknowledge that more than two years had elapsed between when the Petitioner's 2003 return had been filed and when the audit was issued. When errors of the type made by Petitioner are made on a return it does take time catch them through the audit process. Part of the delay is due to the fact that the information to perform the audit comes from the Internal Revenue Service and the Commission does not receive that until sometime after the return has been filed. The length of time between when the erroneous return has been filed and when the audit is finally issued is not basis for waiver of interest. In this case the underpayment of tax resulted from errors on the return filed by Petitioners. Additionally interest may not be waived during the audit appeal process based on financial hardship. After this appeal is closed, Petitioner could apply to the Taxpayer Services Division for

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the Offer in Compromise Program where financial hardship is considered in the amount of tax and interest actually collected.

Based upon the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the interest associated with Petitioner's individual income tax for tax year 2003. 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.

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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

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.

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