

06-1462
Penalty & Interest
Signed 06/07/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 06-1462
v.)	
)	Account No. #####
AUDITING DIVISION,)	Tax Period: 2001
UTAH STATE TAX COMMISSION,)	Tax Type: Penalty & Interest
)	
Respondent.)	Presiding: Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, from the 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 March 13, 2007. Petitioner is appealing interest of approximately \$\$\$\$ for the late payment of income tax for the filing period of tax year 2001. The interest at issue results from a \$\$\$\$ increase in Utah taxable income as a result of an audit to the Petitioner's 2001 tax return. This change in income was an increase to normal income and came as a result of an inheritance that the Petitioner received upon the passing of his parents. The Petitioner did not dispute the \$\$\$\$ in additional taxes that resulted from the change in income but does request relief from interest on those taxes. There are no penalties at issue because the Auditing Division has not assessed a penalty.

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

Petitioner's representative explained that upon the passing of his parents, the attorney handling the estate said nothing about additional tax consequences. The Petitioner did not dispute that he owed the taxes at issue and that he should have reported them if he had known that he owed tax on the additional income. He requests relief from interest on the basis of his innocent mistake.

Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs/pub-17.pdf>, explains the factors that the Commission will consider in reviewing waiver requests. The Commission will, under some circumstances, consider factors such as first time error or reliance on a competent tax adviser as good cause to waiver penalties. For waiving interest, there is a higher standard. Generally the Commission will waive interest only on a showing that Tax Commission error caused the underpayment.

In this case, there is no penalty to waive. With regard to the interest at issue, there has been no evidence presented of Tax Commission error in causing the underpayment. Accordingly, there is no basis to waive interest under the facts presented.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause not been shown to justify a waiver of the interest associated with the 2001 tax year. It is so ordered.

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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.

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 _____, 2007.

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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