

07-0265
Penalty & Interest
Signed 06/29/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 07-0265
v.)	
)	Account No. #####
AUDITING DIVISION OF THE)	Tax Period: 2003
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 June 11, 2007. The case was originally set for a status conference, but the parties agreed to convert the status conference to an initial hearing. Petitioner is appealing interest of approximately \$\$\$\$\$ assessed in connection with an audit of Petitioner's 2003 Utah individual income tax return.

The parties agree on the applicable facts. Petitioner filed a 2003 Utah individual income tax return claiming zero exemptions. Petitioner had withholding amounts that satisfied in full the amount of Utah tax indicated on the return as filed. The Taxpayer Services Division received the return and automatically increased it to two exemptions because Petitioner was married and filing

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a joint return. This increased the amount of Petitioner's refund for 2003. The March 10, 2004 notice explaining the increased refund explained that "both exemptions must be claimed."

In 2007, the Auditing Division audited Petitioner's 2003 Utah tax return on the basis of information received from the IRS. The IRS audit had determined that the correct number of exemptions for Petitioner's 2003 return was not zero, as filed, or two, as amended by the Utah Tax Commission, but one. Petitioner agrees that he was entitled to one exemption for 2003 and does not dispute that he owes the \$\$\$\$ in additional Utah taxes that resulted from the change from two exemptions to one. He does, however, request a waiver of any interest charge because he did not make the change that resulted in the underpayment of 2003 taxes.

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

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. Although requirements for waiving interest are stringent, Commission error is among the reasons that will provide a showing of good cause sufficient to waive interest.

In this case, it appears that Commission error was the cause of Petitioner's underpayment. Petitioner neither asked for nor participated in a decision to increase his exemptions to two. The Commission made that change and all parties agree that the change overstated the number of exemptions that Petitioner should have been claiming for 2003.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the interest associated with the 2003 Utah tax return of approximately \$\$\$\$\$. 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.

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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