

07-0268  
Income Tax  
Signed 04/04/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,	<b>ORDER</b>
Petitioners,	Appeal No. 07-0268
vs.	
TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION,	Tax Type: Income Tax Tax Period: 2000, 2001 Account No. #####
Respondent.	Judge: Robinson

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**Presiding:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 2, by telephone

For Respondent: RESPONDENT REPRESENTATIVE, Compliance Supervisor,  
Taxpayer Services

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on May 31, 2007, in accordance with Utah Code Ann. §59-1-502.5. The parties were represented as indicated above.

The Division waived a failure to pay penalty of \$\$\$\$ for the 2000 tax year as first time error. The Division declined to waive interest for the 2000 tax year on the grounds there was no Commission error.

The Division declined to waive failure to pay penalty of \$\$\$\$ and interest for the 2001 tax year. It declined to waive the penalty based on compliance history. It declined to waive interest on the grounds there was no Commission error. From these decisions, Petitioners appeal.

APPLICABLE LAW

59-10-543. Burden of proof.

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner . . . . .

59-10-525. Date notice of deficiency is final.

(1) Except in any case where the taxpayer has earlier filed with the commission a petition for redetermination of the deficiency as provided in Title 59, Chapter 1, Part 5, the notice of deficiency shall constitute a final assessment of the deficiency in tax, including interest thereon and any penalties or other additions to tax:

(a) upon the expiration of 30 days, or 90 days if the notice is addressed to a person outside of the states of the union and the District of Columbia, after the date of mailing of the notice of deficiency to the taxpayer; or

(b) upon the date, when in writing, the taxpayer agrees with the commission that a deficiency exists in a specified amount and consents to the assessment of such deficiency.

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

The Division's Response to Petition for Redetermination – Appeal of Waiver Decisions states that Petitioners filed a tax return for the 2000 tax year on March 15, 2001. A refund was issued in the amount of \$\$\$\$\$. An audit assessment of the 2000 tax year was completed in March of 2005, with an additional assessment of \$\$\$\$\$.

The Division's Response states that Petitioners filed a tax return for the 2001 tax year in March of 2002. A refund also resulted. An audit assessment was completed in April of 2006. The assessment showed additional tax due in the amount of \$\$\$\$\$.

In both instances, an income match was done. PETITIONER 2 said they never received notification from the IRS informing them of changes made by the IRS to the federal returns. RESPONDENT REPRESENTATIVE said she had no information regarding a

change made by the IRS. Such a change, if made would have triggered the duty to notify the Commission within ninety days if the change affected State tax liability. Absent such notification affecting Utah tax liability, assessments must be done within three years.

The Division said Statutory Notices, which are notices of a deficiency, were mailed to Petitioners' last known address in CITY, STATE. The Division did not provide the date of mailing.

Petitioners were at the CITY address for about three months. PETITIONER 2 said because of address changes, the first they knew of this issue was when a parent informed them of a call from a collection agency.

Due process requires sending the Statutory Notices to the last known address. It appears that was done in this case. Such notices become final, if there is no response, within thirty days of mailing.

However, if Petitioners did not have a change made in their federal return that affected their Utah return, and if the income match was initiated by the Division more than three years after their returns were filed, the assessments of taxes, penalties, and interest are outside of the three year period of limitation found in §59-10-536.

Petitioners did not establish the assessments were not timely. Petitioners have the burden of proof. Because Petitioners did not request information relating to these issues, and introduce it at the hearing, they have failed to meet their burden.

#### DECISION AND ORDER

Based upon the foregoing, the Commission sustains the penalty and interest. 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

Appeal No. 07-0268

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

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

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