

07-0468  
Penalty & Interest  
Signed 09/12/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

vs.

AUDITING DIVISION OF THE  
UTAH STATE TAX COMMISSION,

Respondent.

**ORDER**

Appeal No. 07-0468

Account No. #####

Tax Type: Penalty & Interest

Tax period: 2003 - 2005

Judge: Jensen

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**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 25, 2007. Although this matter came before the Commission as an appeal to audits for the years in question, Petitioner has no dispute with audit changes by the Division for the years in question. At hearing, Petitioner explained that he agrees with the audit changes themselves but is requesting relief from any penalties and interest assessed for the years at issue.

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 explained that for the tax years at issue, he employed the services of a professional tax preparation company to complete his tax returns. He put full trust in the tax preparer and had no reason to

question their preparation of his taxes. But following IRS audits for the years at issue, Petitioner determined that his tax preparer had given incorrect advice and had computed less in taxes than it should have. For this reason, he requests waiver of penalties at issue.

The Division's representative testified that for the years at issue, the Division had completed audits and had added interest, but had not added any penalties.

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. Error by a first time filer and reliance on a competent tax adviser are both listed among the circumstances for which the Commission will waive penalties. Grounds for waiving interest are more stringent than for waiving penalties. To be granted a waiver of interest, a taxpayer must generally show that the Tax Commission gave erroneous information or took inappropriate action that contributed to the error.

Considering the facts of this case, there are factors that would tend to support a waiver of penalties if they had been imposed. But because the Division has not imposed any penalties, there are none to waive. As for interest, Petitioner has not alleged error or other improper action by the Commission. On that basis, the Commission does not find a showing of good cause to waive interest as computed by the Division.

#### DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the interest associated with the 2003, 2004, or 2005 tax years. 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:

Appeal No. 07-0468

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.

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Clinton Jensen  
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

**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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