

07-0534  
Income Tax Penalty & Interest  
Signed 09/10/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,	<b>ORDER</b>
Petitioner,	Appeal No. 07-0534
vs.	Tax Type: Income Tax Penalty & Interest
TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION,	Account No. #####
Respondent.	Periods: 2005
	Judge: Robinson

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**Presiding:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE, CPA, Power of Attorney

For Respondent: RESPONDENT REPRESENTATIVE, Compliance Agent, Taxpayer  
Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on July 30, 2007. Respondent denied Petitioner's request to waive the penalty and interest. From that decision, Petitioner appeals to the Commission.

DISCUSSION

PETITIONER REPRESENTATIVE, Petitioners' CPA, prepared their 2004 and 2005 returns. He applied a credit from the 2004 return to the 2005 return by carrying it forward. PETITIONER REPRESENTATIVE discovered later that the Petitioners should not have taken the credit in 2004.

The Division's records show the Petitioners made a prepayment in April of 2004 of \$\$\$\$\$. They filed their return in October of 2005. The return took a credit of \$\$\$\$\$.

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The 2005 return was filed on October 16, 2006. Attached to it was a note requesting the credit from 2004 be applied to 2005. No payment was enclosed because Petitioners believed they had a credit from 2004. The 2005 return does not show a credit being applied.

The Petitioners received a notice in November of 2006 informing them they owed \$\$\$\$ for the 2004 tax year. In March of 2007 they paid the tax due. In May of 2007 they paid \$\$\$\$ as a penalty for failure to pay, plus interest.

Of the reasons for waiver listed in Tax Commission Publication 17, reliance on a competent tax advisor is potentially applicable here. It states,

Reliance on a competent tax advisor: You fail to file after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised you a return was not required.

You are required, and have an obligation, to file; reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. You must demonstrate that ordinary business care, prudence and diligence were exercised in determining whether to seek further advice.

Petitioners relied on PETITIONER REPRESENTATIVE'S expertise in filing and preparing their returns. The Division acknowledged there were conflicting documents, including a W-2 PETITIONER REPRESENTATIVE did not prepare, and upon which he and Petitioners relied, that created the misperception of the credit for the 2004 tax year.

#### 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(10).

#### DECISION AND ORDER

Based on the evidence presented, the Commission finds Petitioners have established reasonable cause in support of its request for a waiver of penalty for the 2005 tax year, based on Petitioners' reliance on their tax advisor. Petitioners did not request waiver of the interest.

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

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Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

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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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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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