

07-0587  
Income Tax / Interest  
Signed 09//17/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,

Petitioners,

vs.

AUDITING DIVISION,  
UTAH STATE TAX COMMISSION,

Respondent.

**ORDER**

Appeal No. 07-0587

Tax Type: Income Tax / Interest

Account Nos. #####-1  
#####-2

Tax Year: 2001

Judge: Robinson

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**Presiding:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 2, *pro se*, via telephone

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 August 9, 2007. This appeal arises from the Division's decision on Petitioner's request to waive interest for the 2001 tax year. The Division declined to waive interest.

The IRS audited Petitioners 2001 federal return. It made a change in Petitioners' federal return, finalizing the audit on March 18, 2005. PETITIONER 2 said the IRS told Petitioners it would inform the State of Utah of the changes.

Two years later, the State conducted an audit of Petitioners' 2001 State return, based on information acquired from the IRS. The Division did not assess a penalty. It did assess interest.

Petitioners paid the \$\$\$\$ of income tax due, and requested a waiver of the interest. The basis of the request is the length of time involved and the fact a former accountant made an error that the IRS audit corrected.

Petitioners said the IRS had waived interest. RESPONDENT REPRESENTATIVE said the information from the IRS showed it had not waived interest. The Division said it declined to waive the interest because there was no Tax Commission error leading to the underpayment.

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).

Persons whose federal return is changed in a manner affecting Utah income tax liability are required to file an amended State return within 90 days of notice from the IRS. Utah Code Ann. §59-10-536 (5)(a).

If the person fails to report the correction made by the IRS, the Commission may make an assessment at any time within six years after the date of the correction. Utah Code Ann. §59-10-536 (5)(b).

DISCUSSION

Petitioners' basis for their waiver request is the length of time that has passed. While the IRS made the correction in March of 2005, a delay not caused by Petitioners, when Petitioners received notice from the IRS of the change to their 2001 federal tax return, they were obligated to determine whether that change altered their State return and file accordingly. Additionally, with regard to the interest, Petitioner had the time value of the money through no fault of the Commission.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the assessment of 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 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.

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R. Spencer Robinson  
Administrative Law Judge

Appeal No. 07-0587

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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