

07-0772  
Income / Penalty & Interest  
Signed 09/24/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  v.  TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>ORDER</b>  Appeal No.    07-0772  Account No.    #####  Tax Type:    Income / Penalty & Interest Tax Year:    2005  Judge:        Chapman
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**Presiding:**  
    Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
    For Petitioner:    PETITIONER  
    For Respondent:    RESPONDENT REPRESENTATIVE 1, from Taxpayer Services Division  
                            RESPONDENT REPRESENTATIVE 2, from Taxpayer Services Division

STATEMENT OF THE CASE

    This matter came before the Utah State Tax Commission for an Initial Hearing, pursuant to Utah Code Ann. §59-1-502.5, on September 10, 2007.

    On May 2, 2007, the Petitioner submitted a Petition for Redetermination to Taxpayer Services Division (the "Division"), stating that he had submitted a revised 2005 tax return that in which he was "taking into account [his] out-of-state residency."

    On May 11, 2007, the Division issued a Waiver Decision to the Petitioner, in which it waived a \$\$\$\$ penalty that had been imposed for the 2005 tax year. The Division, however, did not address the Petitioner's income tax liability and interest liability associated with the 2005 tax year.

    On June 12, 2007, the Petitioner submitted another Petition for Redetermination in response to the Division's Waiver Decision, in which he reiterated that he was not a Utah resident for the 2005 tax year

and claimed that he “should not be held liable for the charges” he owes for the 2005 and 2006 tax years and that he should be refunded in full for amounts paid.

At the hearing, it was evident that the parties believed that different issues were to be addressed in the appeal. The Petitioner believed that the Commission was going to determine whether he had any Utah income tax liability for the 2005 tax year, based on his claim that he was a STATE domiciliary attending school in Utah during 2005.

The Division, on the other hand, believed that the only issue before the Commission was whether to sustain its action to deny a waiver of the \$\$\$\$ in interest imposed for the 2005 tax year. The Division stated that the Petitioner’s original refund request only concerned a waiver of penalties and interest. For this reason and because it had already waived the penalty, the Division claimed that the only issue before the Commission was the request for a waiver of interest.

Because of the parties’ different positions, the presiding officer requested a copy of the Petitioner’s original refund request. On September 12, 2007, the Division submitted the Petitioner’s May 2, 2007 Petition for Redetermination; i.e., his original refund request. Nowhere in the request does the Petitioner specifically mention a waiver of penalties and interest. Instead, it appears that the Petitioner may be asking for a redetermination of his 2005 Utah tax liability based on his submission of a revised Utah tax return.

The Division has neither addressed the Petitioner’s request for a refund of all taxes associated with 2005 nor addressed how its acceptance or denial of the Petitioner’s revised tax return affects his 2005 tax liability. Furthermore, although the Division interpreted the Petitioner’s original petition to be a request for refund of both interest and penalty, it did not address a refund of interest in its Waiver Decision.

Ordinarily, the Commission would not address an issue until the Division has issued a decision addressing that issue. Nevertheless, the parties ask the Commission to go ahead and consider the waiver of

interest. The Petitioner stated that if the Commission will consider the interest issue in this appeal, he will not ask the Commission to consider the taxability of his 2005 income by Utah at this time. Instead, he would submit another request to the Division if he decided to contest the taxes in the future. Furthermore, the Division also asks the Commission to consider the interest issue and states that had it addressed the interest issue in its Waiver Decision, it would have denied a refund of interest because the interest arose out the Petitioner filing his 2005 return late and not because of any Tax Commission error. Under these unusual and specific circumstances, the Commission will address whether or not there is reasonable cause to waive the interest that relates to the Petitioner's 2005 tax liability.

#### APPLICABLE LAW

Utah Code Ann. §59-10-539(8) provides that interest shall be added to delinquent individual income tax "at the rate and in the manner prescribed in Section 59-1-402 for underpayments."

UCA §59-1-402(5) provides that "[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the tax commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received."

UCA §59-1-401(11) provides that the Tax Commission is authorized to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause.

#### DISCUSSION

The Petitioner submitted his 2005 tax return in March 2007. Because the return was filed nearly two years late, interest on the delinquent taxes was properly assessed pursuant to Sections 59-10-539(8) and 59-1-402(5). At issue is whether there is reasonable cause to waive the \$\$\$\$ in interest that was imposed on the delinquent taxes, as authorized in Section 59-1-401(11).

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Although penalties and interest may both be waived upon a showing of reasonable cause, the criteria for which the Commission waives interest are different than the criteria for which it waives penalties. Interest is charged because the taxpayer has had the use of the tax dollars during a period when the state should have had that use. For this reason, interest is only waived if the imposition of interest arose from a Commission employee's error. The Petitioner does not contend that the interest arose due to the Tax Commission error or due to his reliance on incorrect advice from a Tax Commission employee. Under these circumstances, the Commission finds that no reasonable cause exists to waive the interest associated with the 2005 tax year. Accordingly, the Petitioner's request for a waiver of interest associated with the 2005 tax year is denied.

DECISION AND ORDER

Based upon the foregoing, the Commission denies the Petitioner's request for a waiver of the interest imposed for the 2005 tax year. 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.

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Kerry R. Chapman  
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 a Formal Hearing is not requested as discussed above, failure to pay any balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

*KRC/07-0772.int*