

07-0821  
Income – Waiver of Interest  
Signed 11/08/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>ORDER</b>  Appeal No.    07-0821  Account No.    #####  Tax Type:     Income – Waiver of Interest Tax Year:      2003  Judge:         Chapman
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**Presiding:**  
    Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
    For Petitioner:    PETITIONER  
    For Respondent:    RESPONDENT REPRESENTATIVE, from Auditing Division

STATEMENT OF THE CASE

On October 30, 2007, this matter came before the Utah State Tax Commission for a Telephone Status Conference, which was converted to an Initial Hearing upon agreement of the parties.

On May 30, 2007, Auditing Division (“Division”) issued a Statutory Notice to the Petitioner concerning the 2003 tax year, in which it assessed \$\$\$\$ in additional income tax, plus \$\$\$\$ in interest that had accrued as of the assessment date. No penalties were imposed. The Petitioner agrees that he owes the additional income tax that was assessed. However, because the mistake that led to the assessment was unintentional and because the assessment was made more than three years after he filed his 2003 return, the Petitioner asks the Commission to waive all or a portion of the interest.

APPLICABLE LAW

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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

Pursuant to Section 59-1-401(11), the Commission is authorized to waive interest upon a showing of reasonable cause. The Commission’s policy is to waive interest only if the interest arose due to Commission error. The Petitioner asserts that more than three years of interest has accrued, in part, because of Commission error demonstrated by the Division’s unreasonable delay in imposing the assessment.

The Division admits that it received the information from the Internal Revenue Service (“IRS”) that led to the assessment around October 2004 and did not assess the additional tax until May 2007. However, the Division proffered that because the IRS sends the Division so many changes relating to Utah income taxability and the Division has so few auditors to implement the changes, it is common for it to issue its assessments three years after receiving the IRS information.

Under the circumstances, the Commission does not consider the Division’s practice to arise to the level of Commission error. The mistake that led to the error was made by the Petitioner or his tax preparer, and the Petitioner has had use of the unpaid tax in the interim. Furthermore, upon the IRS changing the Petitioner’s federal return, the Petitioner failed to file an amended Utah state return within 90 days of the change, as required under Utah Code Ann. §59-10-536(5). For these reasons, the Commission denies the Petitioner’s request for a waiver of all or a portion of the interest assessment.

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DECISION AND ORDER

Based upon the foregoing, the Commission denies the Petitioner's appeal. It is so ordered.

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

\_\_\_\_\_  
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 of Appeal Rights and Payment Requirement: Any balance due as a result of this order must be paid within thirty days of the date of this order or a late penalty could be applied.** If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission pursuant to Utah Code Sec. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63-46b-13 et seq.

*KRC/07-0821.ord*