

08-0032  
Audit  
Signed 05/28/2008

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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>INITIAL HEARING ORDER</b>  Appeal No. 08-0032  Account No. ##### Tax Type: Income Tax Tax Year: 2004  Judge: Marshall
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *Pro Se*

For Respondent: RESPONDENT REPRESENTATIVE, Auditing Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing, pursuant to the provisions of Utah Code Ann. §59-1-502.5 on April 30, 2008. The Taxpayer has requested a waiver of the interest assessed on an audit deficiency for the 2004 tax year. As of the hearing date the interest amount was \$\$\$\$\$.

APPLICABLE LAW

Section 59-1-402(5) of the Utah Code provides, "Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the 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." Utah Code Ann. §59-1-402(5) (2004).

The Commission has been granted discretion in waiving penalties and interest. Section 59-1-401(11) of the Utah Code provides, "Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part." Utah Code Ann. §59-1-401(11) (2004).

The Commission has issued Publication 17, available at <http://tax.utah.gov/forms/pubs>, to set forth the factors the Commission may consider in determining whether reasonable cause exists for the waiver of penalties or interest. With regard to the waiver of interest, Publication 17 specifically provides, “[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the Tax Commission gave you erroneous information or took inappropriate action that contributed to the error.”

DISCUSSION

Taxpayer is requesting a waiver of the interest on the grounds that he had correctly calculated his tax liability, but the return was incorrectly processed by the Tax Commission. The Taxpayer explained that on his return, he entered the amount of \$\$\$\$ on line 6a, however he failed to enter the sum of lines 6a-6d into box 6. When the return was processed, the Commission entered a zero in box 6, which resulted in the Taxpayer receiving a refund of \$\$\$\$ more than it should have been.

The Division’s representative stated that the Division became aware of the error through a comparison of the Taxpayer’s state and federal returns. He stated that the amounts were correctly reported on the return, was incorrectly entered during processing, and should have been picked up in auditing. It is the Division’s position that the interest should be waived.

The Commission finds that the Taxpayer correctly calculated his tax liability for the 2004 tax year, and that it was a Tax Commission error in processing and auditing the return that resulted in the additional refund being issued, and subsequently interest being assessed on the overpaid refund. The Commission concludes that reasonable cause has been shown for a waiver of the interest pursuant to Utah Code Ann. §59-1-401(11) (2004).

DECISION AND ORDER

Based on the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the interest associated with Petitioner’s Income Tax Filing for the 2004 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.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Jan Marshall  
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 \_\_\_\_\_, 2008.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**NOTICE:** Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

*JM/08-0032.int*