

08-0857  
Audit  
Signed 08/14/2008

---

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER 1 & PETITIONER 2,

Petitioner,

v.

AUDITING DIVISION OF THE UTAH  
STATE TAX COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 08-0857

Account No. #####

Tax Type: Income Tax

Tax Year: 2005

Judge: Marshall

---

**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1, *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 August 6, 2008. The Taxpayer has requested a waiver of the interest assessed as a result of an audit on his 2005 income tax return. As of the hearing date the accrued interest totaled \$\$\$\$\$.

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) (2005).

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) (2005).

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. Among those factors listed is a “timely mailing”. Publication 17 also indicates the Commission will consider a taxpayer’s filing history when making a decision on a request to waive penalties.

DISCUSSION

Taxpayer is requesting a waiver of the interest assessed on his 2005 income tax return. The Taxpayer stated that there was a data entry error and that the Commission entered “zero” rather than the \$\$\$\$ he had claimed as the state tax deducted on their Federal Schedule A.

The representative for the Division acknowledged the data entry error, and recommended that the Commission waive the interest.

Publication 17 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.” There was a data entry error in the processing of Taxpayer’s return. This resulted in a larger refund being issued than the Taxpayer claimed on his return, and subsequently an audit assessment for that amount plus interest. Under the circumstances, the Commission finds that there was an error on the part of the Tax Commission, and that the interest should be waived.

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 Taxpayer’s Income Tax Filing 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.

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

\_\_\_\_\_  
Jan Marshall  
Administrative Law Judge

Appeal No. 08-0857

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/08-0857.int*