

10-1931  
TAX TYPE: INCOME TAX  
TAX YEAR: 2007  
DATE SIGNED: 7-11-2012  
COMMISSIONERS: B. JOHNSON, M. JOHNSON, M. CRAGUN  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 and TAXPAYER-2,  Petitioners,  vs.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>FINAL ORDER</b>  Appeal No. 10-1931  Account No. ##### Tax Type: Income Tax Tax Year: 2007  Judge: Phan
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER-1  
For Respondent: RESPONDENT-1, Manager, Income Tax Auditing  
RESPONDENT-2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Telephone Status Conference on May 7, 2012. The appeal has had an extensive history. An Initial Hearing had been held on April 19, 2011. An Initial Hearing Order was issued on May 10, 2011, which made some changes to the audit deficiency regarding the interest but sustained the tax deficiency in full. The Initial Hearing Order did not state the new balance owed but ordered Respondent (“Division”) to recalculate the amount.

The Petitioner (“Taxpayer”) then sent a letter dated May 12, 2011, in which he stated that he had called NAME-1 of the Auditing Division to determine the exact amount due and asserts that he was told it was \$\$\$\$\$. He states in the letter that he will pay this amount, which he did on May 13, 2011, and that he does not request a Formal Hearing. It appears clear from this letter that the Taxpayer felt this payment resolved the appeal. On the letter itself he states that he sent a copy to NAME-1, however, both envelopes were actually received in the Appeals Unit. One had been addressed to the Appeals Division and one to NAME-2, Administrative Law Judge.

Whether this had been a misunderstanding on the part of the Taxpayer on what he owed or if he had been told something in error, the \$\$\$\$ was not what the Taxpayer owed based on the Initial Hearing Order and the remainder initiated collection action as well as late payment penalties and additional interest. On February 16, 2012, the Taxpayer wrote to the Administrative Law Judge who had heard the Initial Hearing concerned that the matter had not been resolved with his payment of \$\$\$\$\$. The Division submitted a Response on February 10, 2012, in which the Division stated its position was that the tax amount due was \$\$\$\$ as was indicated in the Initial Hearing Order, but most of the interest had been waived. The Division noted that the Taxpayer had paid \$\$\$\$\$ on May 13, 2011.

The Tax Commission then issued an Order to Reopen Appeal on March 7, 2012, and stated that the matter would be scheduled for a Formal Hearing. Prior to the Formal Hearing, the Taxpayer sent a letter dated March 10, 2012, in which he explained that he was not requesting to reopen the appeal and he thought when he paid the check for \$\$\$\$\$, that NAME-1 from the Division had agreed that would settle the matter.

Because from the Taxpayer's March 10, 2012 letter, it did not appear that he wanted the matter reopened for a hearing, a Telephone Status Conference was held on May 7, 2012. At the conference the Taxpayer explained that it was his understanding from the Initial Hearing Order and his conversation from NAME-1 that he just needed to pay the \$\$\$\$\$, which he paid.

However, the Division correctly noted at the conference that the Initial Hearing Order sustained the tax amount of \$\$\$\$\$, which is supported by that Order, at page 6, which stated, "the Commission sustains the Division's assessment of additional tax." Page 1 of the Order lists the audit tax deficiency of \$\$\$\$\$. The Order did not make any adjustment to the tax deficiency, it did waive most of the interest. However, it is understandable that the Taxpayer was confused from reading the Initial Hearing Order and the Initial Hearing Order certainly did not provide the final balance due amount.

After the conference, the Division sent a letter dated May 8, 2012, which stated the balance it considered to be due. It stated there had been assessed with the audit \$\$\$\$ in tax. Penalties of \$\$\$\$ and interest of \$\$\$\$\$, but payments totaling \$\$\$\$\$ were subtracted, for a balance due of \$\$\$\$\$. The Taxpayer would not have received a billing notice after the Initial Hearing Order, which would have provided a payoff balance before the late filing penalty would have been added.

ORDER

After reviewing the information discussed at the hearing and in the file in this matter, the Initial Hearing Order did sustain the tax deficiency in the amount of \$\$\$\$ and waived most of the interest, but did not give an express pay off amount due. The Taxpayer did contact the Division for a pay off amount and paid what he thought was the correct amount within thirty-days of the date of the Initial Hearing Order. Additionally, he sent a letter notifying the Appeals Division of his understanding and the amount he thought he was suppose to pay. There was not a response from the Appeals Division letting him know it was the wrong amount. The system does not send a billing notice after an Initial Hearing Order prior to the late payment penalty being added. There is reasonable cause under Utah Code Sec. 59-1-401(13) for waiver of the late payment penalty.

Therefore, this order reduces the remaining amount owed by the Taxpayer for the 2007 Utah Individual Income Tax audit to \$\$\$\$. To be clear, if the Taxpayer pays \$\$\$\$\$, within thirty-days from the date of this order, the 2007 audit deficiency will be considered paid in full. The Taxpayer must pay this amount within thirty-days from the date of this order to avoid a late payment penalty and additional accrual of interest.

It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
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 in accordance with Utah Code Ann. §63G-4-302. 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 Ann. §59-1-601 et seq. and §63G-4-401 et seq.