

12-2277  
TAX TYPE: INCOME TAX  
TAX YEAR: 2009  
DATE SIGNED: 2-21-13  
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2,  Petitioners,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 12-2277  Account No. ##### Tax Type: Income Tax Year: 2009  Judge: Chapman
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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER-1, Taxpayer (by telephone)  
For Respondent: RESPONDENT, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Telephone Status Conference on February 5, 2013. Upon the agreement of both parties, the matter was converted to an Initial Hearing.

TAXPAYER-1 and TAXPAYER-2 (“Petitioners” or “taxpayers”) have appealed Auditing Division’s (the “Division”) assessment of Utah individual income tax for the 2009 tax year. On August 9, 2012, the Division issued a Notice of Deficiency and Audit Change for the 2009 tax year, in which it imposed additional taxes, penalties and interest,<sup>1</sup> as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2009	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

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<sup>1</sup> The amount of interest shown is calculated through September 8, 2012. Interest continues to accrue until the tax liability is paid in full.

The taxpayers agree that they owe the \$\$\$\$ of tax that was assessed, but do not believe that they should be responsible for any penalties and interest. No penalties have been assessed at this time. Accordingly, the only remaining issue is whether “reasonable cause” exists to waive the interest that the Division imposed.

The taxpayers explain that they made a simple error on TurboTax and do not believe that it warrants the imposition of interest. They contend that the interest should be waived because they have not had control of the timing of the assessment and the appeal. They point out that it took more than two years after they filed their 2009 return for the Division to assess the additional tax and that it took another five months after they filed their Petition for Redetermination for the Tax Commission to hold the Initial Hearing. For these reasons, they ask the Commission to waive any interest that has accrued.

The Division states that “reasonable cause” does not exist in this matter to warrant a waiver of the interest that it imposed. The Division states that interest is waived only if the tax liability arose because of Tax Commission error. They do not consider the timing of the assessment and the appeal to constitute Tax Commission error. As a result, the Division asks the Commission not to waive the interest at issue and to sustain its assessment in its entirety.

#### APPLICABLE LAW

UCA §59-1-401(13) (2013) provides that “[u]pon 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 Admin. Rule R865-1A-42 (“Rule 42”) (2013) provides guidance concerning the waiver of penalties and interest, as follows in pertinent part:

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

- (i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;
- (ii) the total tax owed for the period has been paid;
- (iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;
- (iv) the taxpayer has not previously received a waiver review for the same period; and
- (v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

....

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty

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UCA §59-1-1417 (2013) provides that the burden of proof is upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

- (1) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
- (2) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
- (3) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income;
  - (a) required to be reported; and
  - (b) of which the commission has no notice at the time the commission mails the notice of deficiency.

#### DISCUSSION

The only remaining issue is whether to waive the interest at issue. Pursuant to Section 59-1-401(13), the Commission is authorized to waive penalties and interest upon a showing of "reasonable cause." Interest is assessed because the taxpayer has had use of money that should have previously been paid to the Tax Commission. The criteria to waive interest are more stringent than the criteria to waive penalties. In

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accordance with Rule 42(2), interest is waived only if a taxpayer shows that the Commission gave erroneous information or took inappropriate action that contributed to the error.

The Tax Commission gave no erroneous advice that led to the mistake that was made on the taxpayers' 2009 income tax return. The Tax Commission also did not take any inappropriate action that contributed to the taxpayers' error. Furthermore, it is not reasonable cause to waive interest because the taxpayers do not control the timing of the assessment and appeals processes. For these reasons, "reasonable cause" does not exist to waive the interest at issue. Accordingly, the Division's assessment should be sustained in its entirety.

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Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that reasonable cause does not exist to waive interest in this matter. Accordingly, the Commission sustains the Division's assessment in its entirety. 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 \_\_\_\_\_, 2013.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

**Notice:** If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty. The taxpayers may contact Taxpayers Services Division at (801) 297-7703 to discuss payment arrangements and/or financial hardship.