

12-1817
TAX TYPE: INCOME TAX
TAX YEAR: 2009
DATE SIGNED: 3-5-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-1817</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2009</p> <p>Judge: Nielson-Larios</p>
---	--

Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearing:

For Petitioner: TAXPAYER, by telephone
For Respondent: RESPONDENT, Auditing Division, in person

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 13, 2012 for an Initial Hearing in accordance with Utah Code Ann. § 59-1-502.5. Petitioner (“Taxpayer”) challenges Respondent’s (“Division’s”) Notice of Deficiency and Audit Change (“Statutory Notice”) issued on May 10, 2012 for the 2009 tax year, which provides the following amounts:

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

Interest was calculated through June 9, 2012 and continues to accrue on the unpaid balance. The Taxpayer requests a waiver of the tax and interest assessed.

APPLICABLE LAW

Utah Code § 59-1-1417 (2012) provides that the burden of proof is upon the petitioner (the taxpayer) in income tax matters before the Commission as follows:

In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following . . . [The statute then provides three exceptions; none of which apply to this case.]

The Commission has been granted the discretion to waive penalties and interest. Utah Code § 59-1-401(13) (2012) states:

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.

The Commission has promulgated Administrative Rule R861-1A-42 (2012) to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

- (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.

....

DISCUSSION

The parties agree that the Taxpayer's 2009 state tax return was incorrectly filed; it showed two exemptions, instead of one, and showed an FAGI of \$\$\$\$\$, instead of \$\$\$\$\$. The \$\$\$\$\$ amount equals the Taxpayer's W-2 income only. The parties agree that the correct numbers for the return are one exemption and an FAGI of \$\$\$\$\$. The parties disagree on whether a Tax Commission employee prepared and electronically filed that return and whether the Taxpayer should owe the tax and interest assessed by the Auditing Division based on that alleged filing.

The Taxpayer alleges her Utah income tax return was prepared by a Utah State Tax Commission employee named NAME-1. The Taxpayer said she trusted NAME-1 to prepare the return correctly. The Taxpayer asserts that because it was NAME's error, it is not fair that she, the Taxpayer, should be subject to the assessment.

During the initial hearing, the Taxpayer explained that she had a question about how to report her unemployment income for the 2009 tax year, so on January 30, 2010 at 1:26 p.m., she called the Tax Commission's general number and "punched numbers" to get to the area she wanted. The judge notes that January 30, 2010 was a Saturday, but in her petition the Taxpayer wrote that the call occurred on February 1, 2010, a Monday. The Taxpayer testified that NAME-1 took her call and said she could help the Taxpayer with her taxes over the phone. The Taxpayer further stated that NAME-1 took her information such as her name, Social Security number, address, filing status, number of exemptions, and federal adjusted gross income ("FAGI"). The Taxpayer said NAME-1 told the Taxpayer that she finished the return and sent it in for the Taxpayer. The Taxpayer said she, the Taxpayer, did not receive a

copy of her return at that time. The Taxpayer also said NAME-1 never told her over the phone that the unemployment compensation was part of her federal adjusted gross income. The Taxpayer said she could have prepared her return by herself if NAME-1 had told her that.

The Division stated the Tax Commission has no record of a Tax Commission employee being contacted by the Taxpayer in January 2010 or February 2010 or of a Tax Commission employee filing a return on the Taxpayer's behalf.

The Taxpayer contended that the Tax Commission should have records from its employees' computers that would show the returns filed by the employees using the computers. However, the Division explained that the Tax Commission has no such record, that the Tax Commission's audit trail is created through document numbers and also notes entered by its employees, and that the audit trail is stored on the Tax Commission's servers, not on the employees' computers.

The Division explained that the Taxpayer's 2009 Utah state tax return had been filed electronically through the TAP (Taxpayer Access Point) online system. The Division provided a hard copy of the Taxpayer's 2009 tax return and explained that the figures on the hard copy originated from data reported electronically for the 2009 tax return. At the top of the hard copy of the return is "TAP#####" ("TAP number"). RESPONDENT with the Division explained that a department called Arches oversees the computer program used by the Utah State Tax Commission, so he contacted NAME-2 who is with the Arches Helpdesk to learn more about the TAP number. RESPONDENT did not know NAME-2's last name. Based on his conversation with NAME-2, RESPONDENT explained that only returns filed electronically through the TAP system receive a TAP number, not returns filed through other ways such as TurboTax, and that the TAP system requires a password which Tax Commission employees would not know. RESPONDENT said that taxpayers create their passwords when they create their TAP accounts. RESPONDENT asserts that a Tax Commission employee did not file the Taxpayer's 2009 tax return because the Taxpayer's return was filed through the TAP system and Tax Commission employees do not file returns using that system since the employees do not have taxpayers' passwords for that system. RESPONDENT acknowledged that it is possible the Taxpayer could have told her password to a Tax Commission employee, but RESPONDENT questioned why the Taxpayer would have wanted to do so.

The Division submitted a copy of the Taxpayer's federal transcript and showed that its assessment was consistent with this transcript. The Taxpayer's federal transcript additionally indicates that the Taxpayer's federal return was filed and processed on February 10, 2010 and that her federal information was not subsequently revised from the numbers she filed.

The Division asserted that the tax amount assessed should be sustained because there is no Utah statute that allows the Tax Commission to waive correctly assessed tax, regardless of a possible Tax

Commission error. Furthermore, the Division asserted that interest should be sustained and not be waived for two independent reasons: first, there was no tax commission error, and second, the Taxpayer has not paid the audit tax assessed before seeking a waiver of interest.

In this case, the tax amount assessed should be sustained. The tax amount is based on one exemption and an FAGI of \$\$\$\$\$, which are facts on which both parties agree. There is no Utah statute allowing the Tax Commission to waive a correctly assessed tax even though there is a statute allowing the waiver of interest for reasonable cause shown.

The interest amount assessed should also be sustained. There is not a reasonable cause for waiving interest because the Taxpayer has not shown there was a Tax Commission error. After considering all evidence and testimony, it is uncertain whether a Tax Commission employee filed on the Taxpayer's behalf. The Tax Commission has no record of the Taxpayer having a conversation with a Tax Commission employee in January or February 2010. Furthermore, the TAP number shows the Taxpayer's return was submitted through the TAP system, which requires a password the Tax Commission employees would not have had. Lastly, the Taxpayer did not have evidence of a Tax Commission employee filing on the Taxpayer's behalf other than the Taxpayer's memory of events. The Taxpayer's recollection alone does not overcome the other facts presented.

In conclusion, for the reasons explained above, the Division's assessment should be sustained.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies Taxpayer's request for a waiver of tax and interest assessed on the 2009 income tax filing. 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

Appeal No. 12-1817

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: 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.