

03-1429
Audit
Signed 01/24/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	03-1429
v.	)	Account No.	#####
)		#####
AUDITING DIVISION OF THE	)	Audit Period:	2000
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income
)		
Respondent.	)	Presiding:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioners: PETITIONER 2 (by telephone)
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Auditing Division
RESPONDENT REPRESENTATIVE 3, Auditing Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on August 5, 2004, pursuant to Utah Code Ann. §59-1-502.5. On October 6, 2003, Auditing Division “(Division)” issued to the Petitioners a Statutory Notice of Audit Change that imposed income tax upon them for the 2000 tax year. The Petitioners admitted at the Initial Hearing that their tax preparer had erroneously completed their 2000 Utah income tax return and that the amount of tax imposed by the audit assessment was correct. However, the Petitioners ask the Commission to waive the interest

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associated with the assessment for two reasons: 1) the Petitioners assert that the tax issue underlying the audit assessment is not easily understood and their tax preparer refuses to compensate the Petitioners for the interest that has accrued; and 2) the Petitioners assert that their interest liability has increased since they filed their appeal due to Commission employees' errors relating to the appeals process. For these reasons, the Petitioners request that the Commission waive all or a portion of the interest that is due.

APPLICABLE LAW

The Tax Commission is granted the authority to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause. Utah Code Ann. §59-1-401(11). By Commission policy, "reasonable cause" to waive interest exists if the taxpayer has incurred the interest liability due to Commission error or mistake.

DISCUSSION

Tax Preparer Filed Incorrect Return. The audit assessment at issue imposed interest on a tax liability due in 2001 but not paid until at least three years later. State law provides for the imposition of interest during that period that a taxpayer retains access to funds legally due the state. The Petitioners ask the Commission to waive the interest, however, because the person who prepared their 2000 tax return ("tax preparer") filed an incorrect return and will not take their telephone calls anymore to discuss the issue. The Petitioners state that their tax preparer (who is also the Petitioners' named representative in this matter) did not understand how to determine the Utah income tax liability associated with a Roth IRA rollover and incorrectly completed their return. In addition, the Petitioners state that they have approached the tax preparer's father, who explained to

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them that the computer software his daughter used to prepare their tax return did not properly account for Utah state law. However, he refused to accept responsibility for the mistake and compensate them. The Petitioners ask the Commission to waive the interest under these circumstances and to rewrite the state law dealing with Roth IRA rollovers so that the statute is more specific.

As the Petitioners themselves admitted, the interest that has accrued was due to an error on their return, not an error made by the Tax Commission. Accordingly, there is no reasonable cause under these circumstances to waive the interest. Nor is it reasonable cause to waive interest in those cases where a third party against whom the Petitioners may or may not have a claim refuses to reimburse them. As to the Petitioners' request that the Tax Commission rewrite state law, the agency has no authority to do so. Statutes can only be enacted by the legislature, and any amendment of a statute enacted by the Legislature must also be made by that body.

Interest Since Beginning of Appeal. From the time the appeal was filed in November 2003 until the hearing was held, approximately \$\$\$\$ in interest had accrued. The Petitioners asks that all or a portion of the interest that has accrued since the beginning of the appeal be waived because of Tax Commission error. The Petitioners contend that their tax preparer informed RESPONDENT REPRESENTATIVE 2 in Auditing Division that the Petitioners could not attend the February 2004 Status Conference that the Appeals Division had previously scheduled. The Petitioners claim that RESPONDENT REPRESENTATIVE 2 informed their tax preparer that he would "take care of it," but that he never did. The Petitioners contend this circumstance delayed the hearing process at least a month during which time an Order of Default was issued and,

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subsequently, set aside. For these reasons, the Petitioners assert that they should not be responsible for any interest that accrued due to RESPONDENT REPRESENTATIVE 2 not contacting the Appeals Division to request a continuance on their behalves.

However, upon filing an appeal, a taxpayer can either pay the assessment, which stops the accrual of interest during the appeals period, or not pay it, which results in interest continuing to accrue. The Petitioners or their representative chose the latter option, where interest would continue to accrue. Any taxpayer choosing the later option must realize that various delays and scheduling issues can effect the time it takes to resolve an appeal, during which time interest continues to accrue. In this case, the Petitioners wanted a continuance of the appeals process. Even had RESPONDENT REPRESENTATIVE 2 or the Petitioners' own representative contacted the Appeals Division at the number they were provided and directly asked for the continuance of the February 2004 conference, there is no certainty that the Appeals Division staff and room calendars could have accommodated a Status Conference prior to the June 2004 conference subsequently scheduled and held. In addition, Petitioners should have been aware that interest would continue to accrue during the appeals process because they retained a tax professional to represent them and advise them in this matter. Under these circumstances, the Commission does not believe that the accrual of interest was due to Tax Commission error and does not find reasonable cause to waive any portion of interest due.

DECISION AND ORDER

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Based on the foregoing, the Commission does not find reasonable cause to waive interest associated with the audit assessment imposed by the Division. Accordingly, the Division's audit assessment is sustained. 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 _____, 2005.

Kerry R. Chapman
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 _____, 2005.

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Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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