

04-1170
Audit
Signed 01/12/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	04-1170
v.	)	Account No.	#####
)		
AUDITING DIVISION OF	)	Tax Type:	Income Tax
THE UTAH STATE TAX	)	Tax Year:	1998
COMMISSION,)		
)		
Respondent.	)	Judge:	Robinson

Presiding:
R. Spencer Robinson, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER, via telephone
For Respondent: RESPONDENT REPRESENTATIVE 1, from the Auditing Division
RESPONDENT REPRESENTATIVE 2, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. 59-1-502.5, on December 9, 2004.

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 (10). The problem arose in this case because of an error in the Petitioner's 1998 tax return.

Petitioner's 1998 federal return listed her adjusted gross income as \$\$\$\$\$. It did not include \$\$\$\$\$ from COMPANY. At the time of filing Petitioner had received one 1099R.

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In November of 2000, Petitioner received notice from the Internal Revenue Service of a second 1099R showing an additional \$\$\$\$ of income for the 1998 tax year from COMPANY. Petitioner had not received the form. 1998 was her first year drawing a retirement benefit.

Petitioner checked her bank records. She agreed she had received the \$. She recalls thinking about how this might change her state income tax liability. However, in the midst of moving to a new home, Petitioner felt she could not file an amended return over a small refund. She let it go without taking action.

§59-10-536(5)(a) requires filing of an amended return within 90 days after receiving notice of a change. Petitioner did not file an amended State return. An audit, following receipt of information from the IRS, revealed the error.

Because of the error, Petitioner underpaid her Utah income tax by \$. Under §59-10-537(1), interest is assessed on the unpaid amount.

Petitioner agreed she owes the tax. She argued it is inherently unfair to charge her interest for the entire time. She feels she should have to pay interest for one year.

Petitioner ignores two important points. First, she chose not to file an amended State return. Second, she has had the use of the money during the time prior to her paying the amounts due. Petitioner owes the underpayment, \$, and interest of \$ through October 4, 2004, plus any additional interest accruing until the amount is paid in full.

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies Petitioner's request to abate the interest. Petitioner must also pay the underpayment, if she has not done so. If she is unable to pay the full amount in a lump sum, she may contact the Taxpayer Services Division regarding a payment schedule.

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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 _____, 2004.

R. Spencer Robinson
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 _____, 2004.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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