

05-0273
Audit
Signed 07/13/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-0273
v.)		
	)	Account No.	#####
AUDITING DIVISION OF THE	)	Tax Year:	2000
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income
)		
Respondent.	)	Judge:	Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE Senior Auditor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on June 20, 2005. Although duly notified of the date, time and location of the hearing, Petitioner's representative did not appear at the scheduled hearing. However, she had indicated on the Petition for Redetermination form that she felt the matter could be decided on the record without a hearing. Based on this request the decision in this matter is made based on the written submissions of the parties.

The issue before the Commission is an appeal of the interest assessed with the audit for tax year 2000. Petitioner's representative had requested abatement of both "interest and penalty." However, no penalty had been assessed. The Statutory Notice had been issued on February 17, 2005. As of the date of that notice the interest was \$\$\$\$\$ and continues to accrue on the unpaid balance.

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. 359-1-401(10).

DISCUSSION

PETITIONER REPRESENTATIVE was acting as Petitioner's representative in this matter. She explained that Petitioner, PETITIONER, was her late husband. PETITIONER had been diagnosed with cancer in 2001 and had died that year. She stated that for this reason some things were over looked. However, she indicates that the deficiency should have been brought to her attention sooner.

Respondent had submitted an Answer to Petition for Redetermination in this matter, in which Respondent indicated that state audit was a result of a federal audit. The IRS had increased Petitioner's federal taxable income. Utah income tax is based on the federal taxable income. The IRS does eventually provide the federal audit amount to the State Tax Commission and the Respondent made the changes accordingly. The Commission notes that taxpayers are required to file an amended state return within 90 days of federal audit change. See Utah Code Sec. 59-10-536. Had Petitioner's representative done so the matter could have been resolved sooner.

Interest is generally waived only in the event a Tax Commission employee error resulted in the original underpayment. In this matter the error had been on the part of Petitioner. Under the circumstances it is understandable that there was an error. No penalties were assessed, and the Commission understands that this must have been a difficult time for Petitioner and PETITIONER REPRESENTATIVE. However, the circumstances as described provide no basis for waiver of interest in the appeal process.

Petitioner's representative did not indicate that payment of the tax or the interest would be a financial a hardship and there is no indication if there was also an issue with ability to pay. There is a separate process before the Taxpayer Services Division called Offers in Compromise where some reduction to the amount collected may be made based on verified financial hardship. If this is an issue for Petitioner's representative she should contact Taxpayer Services directly about that program. The telephone number is

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(801) 297-6300.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the interest associated with Petitioner's 2000 income tax. It is so ordered. However, this decision does not preclude Petitioner's representative from contacting Taxpayer Services as discussed above.

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.

Jane Phan
Administrative Law Judge

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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.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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