

05-0388
Audit
Signed 11/04/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	
)	ORDER
Petitioner,)	
)	Appeal No. 05-0388
v.)	Account No. #####
AUDITING DIVISION OF)	Tax Type: Income
THE UTAH STATE TAX)	Audit Period 2001
COMMISSION,)	Judge: R. Spencer Robinson
)	
Respondent.)	

Presiding:

R. Spencer Robinson

Appearances:

For Petitioner: PETITIONER 2, *pro se*, via telephone

For Respondent: RESPONDENT REPRESENTATIVE, 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 August 15, 2005. At issue was Petitioner's request for a waiver of the interest assessed by the Auditing Division.

Petitioners filed a 2001 Utah Resident Income Tax Return on in a timely manner. On April 1, 2005, Respondent received information from the Internal Revenue Service making changes to Petitioners' 2001 tax return. Petitioners received \$\$\$\$ of interest on a law suit settlement. The IRS treated this as income, even though the principle amount is in a retirement account, not a savings account. This altered computations of their medical deductions. Based on the change made by the

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IRS to Petitioners' federal return, Respondent sent a Statutory Notice of Audit Change to Petitioners on April 1, 2005.

Petitioners have been attempting to persuade the IRS it is in error since 2003. Petitioners agreed to make a payment to Respondent of \$\$\$\$\$. The Division is not seeking a penalty. Petitioners were informed they had two years in which to persuade the IRS to reverse its position and seek a refund from the Commission.

APPLICABLE LAW

§59-10-536. Limitations on assessment and collection.

(5) (a) If a change is made in a taxpayer's net income on his or her federal income tax return, either because the taxpayer has filed an amended return or because of an action by the federal government, the taxpayer must notify the commission within 90 days after the final determination of such change. The taxpayer shall file a copy of the amended federal return and an amended state return which conforms to the changes on the federal return. No notification is required of changes in the taxpayer's federal income tax return which do not affect state tax liability.

(b) The commission may assess any deficiency in state income taxes within three years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in Utah tax attributable to such federal change or correction. The provisions of this Subsection (b) do not affect the time within which or the amount for which an assessment may otherwise be made. However, if the taxpayer fails to report to the commission the correction specified in this Subsection (b) the assessment may be made at any time within six years after the date of said correction.

59-10-537. Interest on underpayment, nonpayment or extension of time for payment of tax.

(1) If any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the rate and in the manner prescribed in Section 59-1-402 shall be paid. Interest under this subsection may not be paid if the amount thereof is less than \$1. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(2) Where a deficiency or any interest or additional amounts assessed in connection therewith under Section 59-10-525 or under Subsection (1), or an addition to the tax in case of

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delinquency provided for in Section 59-10-539 is not paid in full within ten days from the date of notice and demand from the commission, there shall be collected as part of the tax, interest at the rate and in the manner prescribed in Section 59-1-402 from the date of such notice and demand until it is paid.

(3) If the time for payment of the amount determined as the tax by the taxpayer is extended under the authority of Section 59-10-522, there shall be collected as a part of such amount, interest thereon at the rate and in the manner prescribed in Section 59-1-402.

59-1-401. Offenses and penalties -- Rulemaking authority -- Statute of limitations -- Commission authority to waive, reduce, or compromise penalty or interest.

(11) 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.

DECISION AND ORDER

Petitioners had the time value of the money at issue in this case. The time value of money is expressed in interest.

The Commission hereby sustains Respondent's assessment. Petitioners may make a payment of the interest and seek a refund should they be able to persuade the IRS to alter its position within two years. It is so ordered.

This decision does not limit either 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. A party disagreeing with this decision must request a Formal Hearing on its behalf to preserve its right to a Formal Hearing. Requests filed by an opposing party do not preserve the non-requesting party's right to a Formal Hearing. Requests for a Formal Hearing must include the

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appeal number, the opposing party's name and address, and shall be mailed to the address listed below:

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.

R. Spencer Robinson

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 _____, .

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner