

05-1186
Audit
Signed 03/06/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1& PETITIONER 2,	)	ORDER	
)		
Petitioners,	)	Appeal No.	05-1186
)		
v.	)	Account No.	#####
)		
AUDITING DIVISION	)	Tax Type:	Income / Interest
OF THE UTAH STATE)		
TAX COMMISSION,	)	Tax Periods:	2002
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 2 (by 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, as described in Utah Code Ann. §59-1-502.5, on February 28, 2006.

At the hearing, PETITIONER 2 stated that she was not contesting the individual income tax that Auditing Division assessed. However, she asks the Commission to waive the interest that the Division assessed due to the following circumstances. PETITIONER 2 explained that the person who had prepared her tax returns for some years did not understand how to report early retirement income she had received for the 2002 tax year, which led to the assessment at issue. PETITIONER 2 states that she cannot ask this person to pay the interest due because he has since

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died. Furthermore, she states that she had no intention to avoid paying the taxes and did so immediately upon learning of the delinquency. For these reasons, she asks the Commission to waive the interest.

The Division states that it did not waive the interest because Tax Commission policy is only to waive interest if it arises due to Tax Commission error.

APPLICABLE LAW

In addition to individual income tax due under the Utah Individual Income Tax Act, UCA §59-10-539(8) provides that “there shall be added to the tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments.”

UCA §59-1-402(5) provides that “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the tax commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.”

Furthermore, in those situations where penalty and interest have been properly imposed, 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).

DISCUSSION

In this case, the Division assessed the income tax and interest that were due, but it did not assess any penalties. Because the Petitioner does not contest the income tax that was assessed, the waiver of interest is the only issue remaining.

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There is no dispute that the Division properly imposed interest on the delinquent income tax. Interest is assessed in accordance with Sections 59-10-539(8) and 59-1-402(5) because the taxpayer has had the use of the tax dollars during a period when the State should have had that use. For this reason, Commission policy is to waive interest only if its imposition arises due to an error of the Commission. There is no testimony or evidence proffered to show that a Tax Commission error caused the circumstances that led to the assessment at issue. The Commission recognizes that the delinquency resulted from an error committed by the Petitioner's tax preparer and that she did not intentionally delay payment of the tax. Nevertheless, the circumstances do not constitute reasonable cause to waive the interest at issue.

DECISION AND ORDER

Based upon the foregoing, the Commission does not find reasonable cause to waive the interest at issue. Accordingly, the Commission denies the Petitioner's appeal and sustains the Division's audit assessment. 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

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Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2006.

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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay any remaining balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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