

05-1405
Audit
Signed 05/31/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-1405
)		
v.	)	Account No.	#####
	)	Tax Type:	Individual Income
AUDITING DIVISION OF THE	)	Tax Years:	2002
UTAH STATE TAX COMMISSION,)		
	)	Judge:	Chapman
Respondent.)		

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER (by telephone)

For Respondent: RESPONDENT REPRESENTATIVE, from 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 May 4, 2006.

At issue is Auditing Division's (the "Division") assessment of additional Utah individual income tax to the Petitioner for the 2002 tax year. The Division disallowed the \$100 "at-home parent" credit that the Petitioner took on his 2002 tax return. Several elements are required to qualify for the \$100 at-home parent credit, one of which is that the child for whom the credit is claimed must meet the definition of "qualifying child." The Division states that the Petitioner satisfies all the necessary elements to qualify for the credit except that the child at issue is not a "qualifying child" for the 2002 tax year. For this reason, the Division disallowed the credit.

A child is defined to be a "qualifying child" if he or she is "no more than 12 months of age on the last day of the taxable year for which the credit is claimed." The Petitioner and Division agree that the child at issue was born on December 31, 2001. Because of the date of the child's birth, the Petitioner asserts

that the child was 12 months of age, not more than 12 months of age, on December 31, 2002, the last day of 2002, the tax year for which he claimed the credit. The Petitioner proffers that the statute, as written, contains a loophole for a child born on December 31, allowing such a child to be a “qualifying child” in two consecutive tax years. For this reason, he took the credit for this child in both 2001 and 2002. He asks the Commission to overturn the Division’s assessment and find that he was entitled to the credit in 2002, as well.

The Division, however, asserts that the child was more than 12 months of age at some time on December 31, 2002, depending on the child’s time of birth. For this reason, the Division asks the Commission to find that the child, who turned exactly 12 months of age at some time on the last day of 2002, was also more than 12 months of age on that date; i.e., the child may have been 12 months and three hours of age on that date.

If such an argument were accepted, however, it could be conceivable that a child born in the last minute of the prior year could qualify for the credit in two consecutive years and be treated differently than all other children born in the prior year for purposes of the credit. Nevertheless, the Commission does not consider the Division’s interpretation unreasonable.

In addition to the two parties’ interpretations, a person could also argue that a child born in December would not be 13 months old on December 31 of the following year, and, thus, “no more than 12 months of age” on the last day of the year following its birth. Because the definition of “qualifying child” may be interpreted in at least two and perhaps more ways, the Commission finds it to be ambiguous. When a statute is ambiguous, the Legislature’s intent is a factor that the Commission may consider in deciding its meaning. The Commission believes that that the statute authorizing the credit, when considered as a whole, indicates a Legislative intent to allow an at-home parent to claim the credit only one time per child. The Commission does not believe that the Legislature intended for the credit to apply only once to the vast majority of children but twice to a small group of children born on one particular day. For these reasons, the Commission finds that the

statute only allows the at-home parent credit to be claimed on the tax year that coincides with the year in which the qualifying child was born. For these reasons, the Commission sustains the Division's assessment.

The Petitioner explains that before taking the credit in 2002, he called the Tax Commission at the telephone number provided on the income tax instruction booklet and spoke to a woman, who agreed that he had found a loophole and could take the credit for the 2002 tax year, as well. Furthermore, the Petitioner states that he telephoned the Commission again on February 8, 2006, spoke to a man named (X), explained the same fact scenario, and was told once again that he could take the credit as he had. Because he took the at-home parent credit in 2002 upon the advice of a Tax Commission employee, the Petitioner asks the Commission to waive the interest that the Division also assessed.

The Commission is authorized to waive interest upon a showing of reasonable cause. Commission policy permits the finding of reasonable cause to waive interest if the taxpayer's action that caused the imposition of interest resulted from the erroneous advice of a Tax Commission employee. Based on the testimony proffered by the taxpayer, the Commission finds that the taxpayer took the at-home parent credit in 2002 upon the erroneous advice of a Tax Commission employee. For these reasons, the Commission finds reasonable cause to waive the interest assessment under these circumstances.

APPLICABLE LAW

For the tax year in question, Utah Code Ann. §59-10-108.1(2) provides that a taxpayer may, upon meeting the qualifications provided in the statute, "claim on the taxpayer's individual income tax return a nonrefundable credit of \$100 for each qualifying child[.]"

A "qualifying child" is defined in UCA §59-10-108.1(1)(c) to mean "a child who is no more than 12 months of age on the last day of the taxable year for which the credit is claimed."

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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.” UCA §59-1-401(10) authorizes the Tax Commission to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that the Petitioner does not qualify for the at-home parent credit he took for the 2002 tax year. However, the Commission finds that reasonable cause exists, under the circumstances proffered by the Petitioner, to waive the interest that was assessed. Accordingly, the Commission sustains the Division’s assessment of additional individual income tax, but waives its imposition of interest. 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 _____, 2006.

Kerry R. Chapman
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 _____, 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 the 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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