

05-1415
Audit
Signed 05/30/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-1415
)		
v.	)	Account No.	#####
	)	Tax Type:	Individual Income Tax
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, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Telephonic Status Conference on May 17, 2006. Both parties agreed to convert the conference to an Initial Hearing, which was held pursuant to the provisions of Utah Code Ann. §59-1-502.5.

The Petitioner appealed the Division's imposition of additional Utah individual income tax and interest for the 2002tax year. The amount of tax imposed was \$\$\$\$\$, plus interest that has accrued on that amount. The Division explained that it imposed the assessment after the Petitioner deducted her state income tax liability on her federal return, which carried forward to the state return, and on her state return, as well. The Petitioner proffered that she filed the appeal not to contest the legality of the Division's assessment, but to request that the Commission waive the assessment due to financial hardship.

APPLICABLE LAW

Utah Code Ann. §59-10-114 provides for certain additions to and subtractions from the federal taxable income of an individual when calculating that person's Utah taxable income. Subsection 59-10-114(1)(a) provides that "[t]here shall be added to federal taxable income . . . the amount of any income tax imposed by this or any predecessor Utah individual income tax law . . . , to the extent deducted from federal adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal taxable income[.]”

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(11).

DISCUSSION

The Petitioner does not contest the legality of the Division's assessment. Accordingly, the Commission finds that the Division's assessment of tax and interest was properly imposed. Section 59-1-401(11) authorizes the Commission to waive penalties and interest, but not tax, upon a showing of reasonable cause. No penalties were imposed. The Commission has determined that reasonable cause to waive interest exists if it is shown that a Commission employee caused the error from which the interest arose. Such circumstances have not been shown in this matter. Accordingly, the Commission finds that reasonable cause does not exist to waive the interest.¹

¹ The Petitioner may, however, contact the Offers in Compromise Section in the Taxpayer Services Division at (#####) to discuss whether she qualifies for a payment plan or for relief due to financial hardship.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's audit assessment and denies the Petitioner's appeal. 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

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

Appeal No. 05-1341

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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