

05-1432
Audit
Signed 03/06/2006

BEFORE THE UTAH STATE TAX COMMISSION

| | | | |
|-------------------|---|--------------|-------------------|
| PETITIONER, |) | ORDER | |
| |) | | |
| Petitioners, |) | Appeal No. | 05-1432 |
| |) | | |
| 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 (by telephone)

For Respondent: RESPONDENT REPRESENTATIVE, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Telephone Status Conference on March 1, 2006. At the conference, the parties agreed to convert the conference to an Initial Hearing, as described in Utah Code Ann. §59-1-502.5.

At the hearing, PETITIONER stated that he was not contesting the individual income tax that Auditing Division assessed. However, he asks the Commission to waive the penalties and interest that the Division assessed due to the following circumstances. PETITIONER explained that the mistake on the return was an honest one and not an attempt to avoid paying tax. In addition, PETITIONER explains that he is retired and will need to work out payment arrangements to pay any

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amount not waived. For these reasons, he believes the assessment of penalties and interest is excessive and asks the Commission to waive them.

The Division states that it did not assess any penalties to the Petitioner. However, concerning the interest assessment, the Division states that it cannot 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 additional individual 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 Commission error. 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 honest mistake and that the assessment may cause hardship to the Petitioner. Nevertheless, the circumstances present do not constitute reasonable cause to waive the interest. If the Petitioner does not appeal this decision by taking the steps explained below, he may contact the Offers in Compromise Section to discuss payment arrangements as explained in the “Notice” on the last page of the decision.

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:

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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

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. If you do not plan to request a Formal Hearing but wish to submit an Offer in Compromise due to financial hardship or other reason or wish to discuss payment

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arrangements, please telephone TAX COMMISSION EMPLOYEE in Taxpayer Services Division at #####.

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