

05-1585
Audit
Signed 01/12/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER)	
)	ORDER
Petitioner,)	
)	Appeal No. 05-1585
v.)	
)	Account No. #####
AUDITING DIVISION,)	
UTAH STATE TAX COMMISSION,)	Tax Type: Income
)	
Respondent.)	Presiding: Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Manager, Income Tax Auditing
RESPONDENT REPRESENTATIVE 2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on January 5, 2006, in accordance with Utah Code Ann. §59-1-502.5. Petitioner is appealing interest assessed with an audit for tax year 2002. The Auditing Division of the Utah State Tax Commission (“Division”) did not assess any penalties in connection with this audit. The Division assessed \$\$\$\$ interest on the audit.

APPLICABLE LAW

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

Following an audit of the Petitioner's 2002 Utah State tax return, the Division assessed \$\$\$\$ in state income tax against the Petitioner to reverse a \$\$\$\$ "At Home Parent Credit" that the Petitioner had claimed on his 2002 state tax return. In addition to the \$\$\$\$ assessment, the Division calculated \$\$\$\$ in interest from April 15, 2003 to the date of the Division's notice. The Petitioner agrees that he was not entitled to take the \$\$\$\$ credit, but requests that the Commission waive the interest charge of \$\$\$\$.

In support of his position, the Petitioner testified that the error in his 2002 state tax return was an honest error rather than any effort to evade taxes. Petitioner had engaged the services of a tax professional in preparing his 2002 state return. That tax professional used a commercially available computer program called "(X)" to prepare Petitioner's 2002 tax return. The (X) program generally alerts the user when a deduction or credit is taken improperly. In this case, the program did not alert the user that the Petitioner should not take the credit because the Petitioner's income was over the allowable limit for the At Home Parent Credit. Thus, neither the Petitioner nor the tax professional had knowledge of the error in the 2002 state tax return until the Division conducted its audit.

Respondent's representative indicated that the Division had correctly assessed interest following applicable state law. The Division calculated interest to compensate the state for the time value of money that the parties agree the state should have received in 2003 but had not yet received

as of the hearing in this matter. The Division was not attempting to take any punitive action. The Division representative testified there was no penalty involved in this matter and that the \$\$\$\$ at issue was interest only. Although any error in filing the Petitioner's 2002 was an honest mistake, the Division notes that it did not write, sell, or sanction the computer software in question. Further, the parties agree that there was no evidence that any Division employee gave any erroneous tax advice or otherwise had a hand in any error that led to the mistake in the 2002 return at issue in this matter

Under Utah law, interest is assessed when taxes are not paid or underpaid to compensate the state for the time value of money. Although reliance on the advice of a qualified tax professional can be grounds for the Commission to waive penalties, the Division did not assess penalties in this matter. The only issue in this case is interest on \$\$\$\$ for approximately two years. Interest is generally waived only in the event that Tax Commission employee error gave rise to the late payment or underpayment. Because there is no evidence of Tax Commission employee error in this matter, there is no good cause shown for a waiver of interest.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the interest associated with Petitioner's individual income tax for tax year 2002. 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

Appeal No. 05-1585

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.

Clinton Jensen
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 the Petitioner does not request a Formal Hearing within the thirty-days as discussed above, failure to pay the amount of deficiency that results from this order may result in an additional penalty.

Appeal No. 05-1585

CDJ/05-1585.int