

05-1634
Audit
Signed 09/07/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-1634
v.	)	Account No.	#####
)		
AUDITING DIVISION OF THE	)	Tax Type:	Income Tax
UTAH STATE TAX COMMISSION,	)	Tax Period:	2002
)		
Respondent.	)	Judge:	Jensen

Presiding:
Clinton Jensen, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE, Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Commission for a Status Conference on February 28, 2006. At the joint request of the parties, the Commission converted the Status Conference to an Initial Hearing and conducted the Initial Hearing on February 28, 2006. At the hearing Petitioner contested interest assessed with an audit of her 2002 Utah Individual Income Tax Return.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Sec. 59-10-104 as follows:

...a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual...

State taxable income is defined in Utah Code Sec. 59-10-112 as follows:

"State taxable income" in the case of a resident individual means his federal taxable income (as defined by Section 59-10-111) with the modifications, subtractions, and adjustments provided in Section 59-10-114 . . .

Interest is assessed pursuant to Utah Code Sec. 59-1-402(5) as follows:

Interest 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.

DISCUSSION

The Petitioner timely filed her 2002 Utah tax return. This return showed as state taxable income the same figure as the Petitioner had used on her federal tax return. Because the Petitioner did not make an adjustment to the federal income figure as required in Utah, her income for her Utah tax return showed \$\$\$\$ lower than it should have. The Auditing Division issued a Statutory Notice of Audit change on October 20, 2005 and calculated the additional tax owed on the \$\$\$\$ increase in income. That additional tax was \$\$\$\$ and interest on that amount, through November 21, 2005, was \$\$\$\$. Interest continues to accrue beyond November 21, 2005. At hearing, the Petitioner did not dispute that she owed an additional \$\$\$\$ in state income tax for 2002, but did ask that the Tax Commission not charge interest.

Interest is generally waived only in the event a Tax Commission error caused the late payment or underpayment. That was not shown in this case. The interest is the result of an error on Petitioner's 2002 income tax return.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the audit deficiency of additional income tax and interest against Petitioner 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 Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Appeal No. 05-1634

Appeal No. 05-1634

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 _____, 2004.

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

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

CDJ/05-1634.int