

06-0256
Income Tax
Signed 02/12/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	06-0256
v.)		
	)	Account No.	#####
AUDITING DIVISION OF)		
THE UTAH STATE TAX	)	Audit Period:	2003
COMMISSION,	)	Tax Type:	Income Tax
)		
Respondent.	)	Judge:	Robinson

Presiding:
R. Spencer Robinson, Administrative Law Judge

Appearances:
For Petitioners: PETITIONER REPRESENTATIVE, wife of PETITIONER, *pro se*, via telephone
For Respondent: RESPONDENT REPRESENTATIVE, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on October 17, 2006 pursuant to the provisions of Utah Code Ann. §59-1-502.5.

Respondent sent Petitioner a Notice of Audit Change, notifying him that an audit had determined he made an error on his Utah income tax return. Specifically, the audit found Petitioner had underpaid his taxes for the 2003 tax year. Apparently, a W-2 for the 2002 tax year was included with the Petitioner's 2003 tax return. The return did not include the data from the 2002 W-2.

When Petitioner received a refund in excess of what was anticipated, Petitioner contacted TAX COMMISSION EMPLOYEE at the Tax Commission. TAX COMMISSION EMPLOYEE stated the refund was correct. Petitioner accepted the refund.

Respondent sent Petitioner notice of an audit showing the refund exceeded the proper amount by \$\$\$\$\$. Respondent included interest on the improperly refunded amount in its notice to Petitioner.

Petitioner filed a Petition for Redetermination on March 8, 2006. He paid the tax due. He requests a waiver of the interest, on the grounds of Tax Commission error.

APPLICABLE LAW

59-10-537. Interest on underpayment, nonpayment or extension of time for payment of tax.

(1) If any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the rate and in the manner prescribed in Section 59-1-402 shall be paid. Interest under this subsection may not be paid if the amount thereof is less than \$1. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(2) Where a deficiency or any interest or additional amounts assessed in connection therewith under Section 59-10-525 or under Subsection (1), or an addition to the tax in case of delinquency provided for in Section 59-10-539 is not paid in full within ten days from the date of notice and demand from the commission, there shall be collected as part of the tax, interest at the rate and in the manner prescribed in Section 59-1-402 from the date of such notice and demand until it is paid.

(3) If the time for payment of the amount determined as the tax by the taxpayer is extended under the authority of Section 59-10-522, there shall be collected as a part of such amount, interest thereon at the rate and in the manner prescribed in Section 59-1-402.

Utah Code Ann. §59-1-401(11) “Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.”

DISCUSSION

There is evidence that Petitioner relied on erroneous advice from a Tax Commission employee. While Petitioner may have included a 2002 W-2 in error, the tax return contained the correct

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data. Apparently, a Commission employee added information from the 2002 W-2 and increased the Petitioner's refund. When Petitioner questioned the refund, he was assured it was correct.

DECISION AND ORDER

Petitioner's request for a waiver of the interest is granted. 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 _____, 2007.

R. Spencer Robinson
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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner