

06-1066
Audit
Signed 11/20/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	06-1066
v.)		
	)	Account No.	#####
AUDITING DIVISION OF THE)		#####
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income
	)	Tax Years:	2002-2004
Respondent.	)	Judge:	Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 2

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 November 8, 2006. It was originally scheduled for a Telephone Status Conference but converted to the Initial Hearing. Petitioners are appealing the interest assessed with an audit for tax years 2002 through 2004. No penalties had been assessed with the audit. Petitioners did not contest the underlying audit deficiencies.

APPLICABLE LAW

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. Utah Code Sec. 59-1-401(11).

DISCUSSION

Petitioner PETITIONER 2 explained that she and PETITIONER 1 had owned a house in Utah during the years in question and that is where she primarily resided. She had worked in Utah and the

money she earned she had claimed on her Utah tax return. However, PETITIONER 1 was employed in STATE. She indicates that they had relied on advice from an accountant who had told them as long as PETITIONER 1 did not spend more than 185 days in Utah, he did not have to claim the STATE income on his Utah return or pay tax on the STATE income. Petitioners ask that the interest be waived because they relied on this advice and point out that erroneous advice had already caused them a lot of problems. After the Auditing Division had brought the issue of domicile to Petitioners' attention they did seek advice from another accountant and now they do not contest the tax amount.

Interest is assessed pursuant to statute when taxes are not paid or are underpaid. Interest is to compensate the state for the time value of money and is generally waived only in the event the Tax Commission, or Tax Commission employee error gave rise to the late payment or underpayment. This type of error was not indicated in the facts.

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 Petitioners' individual income tax for tax years 2002 through 2004. 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

Appeal No. 06-1066

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2006.

Jane Phan
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

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

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