

06-1497
Income Tax
Signed 06/26/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
v.)	Appeal No. 06-1497
)	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, *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 April 9, 2007, pursuant to the provisions of Utah Code Ann. §59-1-502.5. Petitioner requests she be allowed to claim an exemption for a disabled child.

On November 13, 2006, Respondent sent Petitioner a Notice of Audit Change, notifying her that an audit found she owed an additional \$\$\$\$ in Utah income tax. The Division determined Petitioner was not entitled to claim the disability exemption for her son.

Petitioner filed a Petition for Redetermination on December 1, 2006. In her Petition, she stated she claimed the earned income credit every year. She explained the child's father lives in STATE 1. She said it only made sense for her to claim the exemption.

At the hearing, Petitioner said she relied on the advice of a CPA, who told her she could claim the exemption. She said the child's father, who lives in STATE 1, claimed the child as a dependent on his 2003 federal return. She said because she receives the earned income credit, she felt she could claim the Utah exemption for a disabled child on her Utah return.

Respondent said Petitioner did not claim the child on her 2003 federal or Utah returns. For this reason, Respondent revised the total number of exemptions from two to one. This reduced the exemption amount by \$\$\$\$\$. The result was a \$\$\$\$\$ increase in Petitioner's state income tax liability for 2003. Respondent also assessed interest. It did not assess a penalty.

APPLICABLE LAW

59-10-543. Burden of proof.

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner . . .

59-10-114. Additions to and subtractions from federal taxable income of an individual.

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(2) There shall be subtracted from federal taxable income of a resident or nonresident individual:

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(f) 75% of the amount of the personal exemption, as defined and calculated in the Internal Revenue Code, for each dependent child with a disability and adult with a disability who is claimed as a dependent on a taxpayer's return;

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.

59-1-401 Offenses and penalties – Rulemaking authority – Statute of limitations – Commission authority to waive, reduce, or compromise penalty and interest.

(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

Under the plain language of 59-10-114(2)(f), in order to qualify for the exemption, the disabled child must be declared as a dependent on a taxpayer's return. Petitioner did not declare the child as a dependent. Therefore, she is not eligible for the additional exemption provided under 59-10-114(2)(f).

Interest on unpaid taxes is generally not waived unless the failure to make a timely payment is due to Tax Commission error. In this case, Petitioner did not rely on advice from an employee of the Tax Commission.

DECISION AND ORDER

Based on the foregoing, the Commission affirms the audit. Petitioner owes an additional \$\$\$\$\$, plus interest. 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

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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

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