

07-0099
Income
Signed 05/03/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
)	ORDER	
Petitioners,)		
)	Appeal No.	07-0099
v.)		
)	Account No.	#####
AUDITING DIVISION OF THE)		
UTAH STATE TAX COMMISSION,)	Tax Type:	Income
)		
Respondent.)	Judge:	Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1

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 April 23, 2007. It had originally been scheduled for a Telephone Status Conference and was converted to the hearing with the consent of the parties. Petitioner is appealing a portion of the tax, as well as penalty and interest in an audit deficiency for tax years 2003 and 2004. The Statutory Notices of Deficiency had been issued on February 1, 2007. The Statutory Notice for 2004 had indicated a penalty in the amount of \$\$\$\$\$. At the Hearing Respondent's representative indicated that the penalty had been listed on the notice in error and had already been removed by Respondent. Petitioners have paid the tax and interest for both these periods, so their account indicated paid in full for the years at issue.

DISCUSSION

Petitioner requested waiver of the interest as well as a refund of \$\$\$\$\$ for "consideration" for the frustration and anxiety the Respondent and audit process has caused him. On December 2, 2006,

Respondent had sent to Petitioners a letter requesting information regarding deductions for health care premiums on their Utah income tax returns for 2003 and 2004. Petitioners responded with a letter on December 13, 2007, in which Petitioners acknowledged that they owed the tax for 2003 and a portion, but not all of the tax for 2004. With the letter Petitioners sent checks for payment of the tax amounts that they acknowledged that they owed. They did not send in payment of the interest on the amount. Subsequently Petitioners had a telephone conversation with auditor AUDITOR, on January 5, 2007. Petitioner indicates that AUDITOR told him he had not seen Petitioners' letter or payments.

On February 1, 2007, the Statutory Notices were mailed, however, the payments that Petitioners had made in December were not reflected on the Statutory Notice form. Petitioners then filed the appeal on February 6, 2007, as well as paid the balance of the tax and interest. The matter was scheduled for a Telephone Status Conference on April 23, 2007. Prior to the date of the Status Conference Petitioners received Respondent's answer, which was confusing as it referred to other taxpayers.

Respondent's representative explained that the audit had followed the normal procedures. AUDITOR did not know about the payments made in December because they went to the Processing Division. The Statutory Notices mailed on February 1, 2007, did not have a place to indicate a payment made just prior to the issuance of the audit as a prepayment on the audit deficiency and indicated a penalty, which has been removed. He also indicated it was not the Division's intent to cause frustration in the process.

Upon review of Petitioner's request in this matter, the Tax Commission has no statutory provision to reduced a tax amount lawfully owed as payment for frustration or anxiety, even if Petitioners had shown cause to do so, which the Commission does not find from the facts. Income tax audits generally will cause some level of anxiety in almost all individual income taxpayers. Petitioner is correct in that there were some areas with the process that could have been handled better. However, Petitioner is essentially asking in

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the request for “consideration” for tort liability or damages that are not within the scope of the Tax Commission and could only be pursued through the Governmental Immunities Act of Utah, at Utah Code Title 63, Chapter 30d.

Interest may be waived under 59-10-401(11) if reasonable cause has been shown, but this is generally only if an error on the part of the Tax Commission or Tax Commission employee caused the late payment or underpayment. In this matter the underpayment was the result of Petitioners making errors on their 2003 and 2004 tax returns in calculating their deduction amount. Certainly the Commission does not find this to be anything more than an inadvertent or honest error on the part of Petitioners and agrees with Respondent that no penalties should be issued. However, there is no cause for waiver of the interest.

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).

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the audits as they pertain to the tax and interest for tax years 2003 and 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:

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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.

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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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