

07-1528
Penalty and Interest
Signed 05/28/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

TAXPAYER SERVICES DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 07-1528

Account No. #####

Tax Type: Income Tax

Tax Year: 2003

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER, *Pro Se*

For Respondent: RESPONDENT REPRESENTATIVE 1, Manager, Waivers
Unit, Taxpayer Services
RESPONDENT REPRESENTATIVE 2, Taxpayer Services
RESPONDENT REPRESENTATIVE 3, Taxpayer Services

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on May 8, 2008. The Petitioner has requested a waiver of the interest assessed for the 2003 tax year, which continues to accrue.

APPLICABLE LAW

Section 59-1-402(5) of the Utah Code provides, “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the 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.” Utah Code Ann. §59-1-402(5) (2003).

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(10) of the Utah Code provides, “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 Ann. §59-1-401(10) (2003).

The Commission has issued Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs>, which sets forth the factors the Commission may consider in determining whether “reasonable cause” exists for the waiver of penalties or interest. Publication 17 states, “[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the Tax Commission gave you erroneous information or took inappropriate action that contributed to the error.”

DISCUSSION

The Taxpayer is requesting a waiver of the interest assessed for the 2003 tax year. The Taxpayer testified that the error on the 2003 tax return was due to a key-stroke error. He does not dispute the amount of the tax deficiency, and when he received the notice, he contacted the Tax Commission and asked to set up a payment plan, paying \$\$\$\$ per month. The Taxpayer stated that some time later, he was told that if he could pay off the balance, that either the penalty or interest would be waived. The Taxpayer paid the remaining balance on a credit card, so that the penalty would be waived. The Taxpayer added that he is a retired senior citizen on a fixed income, and the tax and interest have created a financial hardship.

The Division’s representative provided a copy of the Statutory Notice of Deficiency, which shows the tax amount due, the interest due, and that no penalties were assessed. The Division’s position is that interest was properly assessed through the audit procedure, and that the Taxpayer has not shown reasonable cause to justify a waiver of the penalties as he has not shown a Tax Commission error.

Applying the principals of Publication 17, the Taxpayer must show that the Tax Commission provided erroneous information or took inappropriate action that contributed to the error. The Taxpayer testified that the error on the 2003 return was due to an improper key-stroke, which is not a Tax Commission error. Financial hardship is not considered grounds for waiver of penalties through the appeal process. However, the Commission has established the “Offer in Compromise” program in the event that a taxpayer experiencing financial hardship and does not have the ability to pay any unpaid portion of tax, penalty, and interest. The Commission does not know whether the Taxpayer would qualify for this program, and he will need to contact the Taxpayer Services Division directly at (801) 297-7703.

DECISION AND ORDER

Based on the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the interest associated with Petitioner’s Income Tax Filing for the 2003 tax year. 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 _____, 2008.

Jan Marshall
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 _____, 2008.

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. Petitioner may contact the Taxpayer Services Division to make payment arrangements by calling (801) 297-7703.