

08-0351
PENALTY AND INTEREST
TAX YEAR: 2004
SIGNED: 06-23-2008
COMMISSIONERS: P. HENDRICKSON, M. JOHNSON, D. DIXON
EXCUSED: R. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 08-0351</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2004</p> <p>Judge: Phan</p>
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Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT REP., Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5 on June 10, 2008. The matter had been set for a Telephone Status Conference, but was converted to the Initial Hearing to address the only remaining issue, interest. Petitioner (the "Taxpayer") is appealing interest of approximately \$\$\$\$ issued with an income tax audit for tax year 2004, on the basis of Tax Commission error. The Taxpayer understood that she owed the tax amount indicated in the audit, which was \$\$\$\$\$. No penalties had been assessed with the audit.

APPLICABLE LAW

Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the

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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 Sec. 59-1-402 (5).

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(13).

DISCUSSION

At the hearing the Taxpayer and the representative for the Auditing Division explained the circumstances and there was no dispute as to the facts that occurred. When Petitioner filed her Utah 2004 tax return she did indicate one exemption on line 2(e). However, on line 9 of the return she did not claim a deduction for a personal exemption and she calculated her tax amount without taking an exemption. The amount of tax that she claimed on her return was correct. Once the return was filed, the Processing Division data entered the return into the computer. Because the Taxpayer had indicated one exemption on line 2(e), the Processing Division recalculated her tax as if she were entitled to the one exemption. So instead of basing the Taxpayer's tax amount and, therefore, refund on the correct amount that she had claimed on her return, a new tax amount was calculated and a larger refund generated based on the new, but incorrect numbers.

The refund was direct deposited and Petitioner did not recall receiving any notice that explained why the refund was larger than the amount she had claimed on her return. Petitioner indicates that she did not even realize that she had been issued a refund larger than the amount claimed on her return.

The representative for the Auditing Division indicated that the Division did not consider this to be a situation of Tax Commission error, because Petitioner had listed herself as an exemption on line 2(e). It was the Division's position that if Petitioner was not entitled to claim herself as an exemption that line should have been 0.

DECISION AND ORDER

Upon review of the information provided by the parties in this matter, the Commission notes that Petitioner did claim the correct amount of tax on her 2004 return, by calculating the amount without taking a deduction for personal exemption. However, in contradiction she did indicate an exemption on line 2(e). Processing reconciled these two differences by choosing the incorrect option without requesting further verification from Petitioner. The Commission concludes that the Processing Division did change the tax claimed on Petitioner's return from the correct amount to an incorrect tax amount and finds this to be basis to waive the interest.

Based upon the foregoing, the Commission finds sufficient cause for waiver of the interest assessed with the audit of Petitioner's 2004 income tax filing. Petitioner has thirty days from the date of this order to pay the tax amount indicated in the audit. After that, interest will begin to accrue on any portion of the unpaid balance from that date forward. Petitioner should note that a late payment penalty may also be assessed if the tax amount is not paid within the thirty days. 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.

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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 _____, 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. Petitioners may contact the Taxpayer Services Division about setting up a payment plan, at (801) 297-7703.

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