

08-1972
AUDIT
TAX YEAR: 2005
SIGNED 04-27-09
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 08-1972</p> <p>Account No. #####</p> <p>Tax Type: Severance Tax</p> <p>Tax Year: 2005</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP
For Respondent: RESPONDENT REP, Senior Auditor

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 March 26, 2009. Petitioner (the "Taxpayer") is appealing interest assessed with a severance tax audit for the period of January 1, 2005 through December 31, 2005. The Taxpayer has already paid the tax and did not contest the tax during the hearing. The amount of the interest that is at issue in this matter is \$\$\$\$\$. This amount has already been paid and the Taxpayers requests that it be refunded. No penalties were assessed with the audit.

APPLICABLE LAW

Interest 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 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

The audit had found that the Taxpayer was not entitled to take a (X) well credit for the Taxpayer's (X) Well. The Taxpayer's representative explained that she had called the Tax Commission and spoken with EMPLOYEE in the Auditing Division on May 15, 2006, to ask if she could claim the (X) credit for the (X) Well. She had kept notes of the conversation and to whom she had spoken with. She indicates that she thought EMPLOYEE had looked the well up on his computer. It was her position that EMPLOYEE told her it was a (X) well, so that she did not owe taxes on it for the first twelve months. If it had, in fact, been a (X) well the Taxpayer would have been entitled to the credit against the next quarterly return. Based on this telephone conversation, the Taxpayer took the credit relying on the advice of EMPLOYEE. When the Taxpayer submitted the appeal in this matter, she did explain in the appeal that she had been relying on the advice from EMPLOYEE.

It was the Division's position that the well was not a (X) well, it was a developed well and, therefore, the Taxpayer was not entitled to the credit. The Division's representative had no information to refute the Taxpayer's contention that she had spoken with EMPLOYEE and had been given the wrong advice. The Division's representative stated that generally an auditor who answered such a telephone call would not have made notes of this type of conversation and the Division had no information regarding the telephone conversation. The Division's representative did not refute that EMPLOYEE was an auditor who may have answered such a telephone call, nor did the Division ask him to attend the hearing to support or confirm such a conversation.

Interest is assessed on all audit deficiencies pursuant to Utah Code Sec. 49-1-402. Interest is assessed when taxes are not paid or underpaid to compensate the state for the time value of money. Interest is generally waived only in the event the Tax Commission, or Tax Commission employee error gave rise to the late payment or underpayment.

The Commission generally does not waive interest based on representations by the Taxpayer that they had followed the verbal advice from a Tax Commission employee resulting from a telephone conversation. The accuracy of the advice is based on the accuracy and completeness of the representations made by the taxpayer and certainly there could be misunderstandings from what was said by either party to the conversation. However, there are unique factors in this case that support waiver of interest. The Taxpayer had

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kept specific notes as to when the conversation took place, whom she had spoken with and the information received. Further, the information asked for was of such a specific nature that it was unlikely to have been misunderstood by either party to the conversation, either the well was a (X) well or it was not one. Furthermore, the Division could have produced EMPLOYEE to explain whether he had any recollection of the telephone conversation. The Division had notice from the Taxpayer that this was her contention, because it was listed on the Petition form.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the interest assessed with the severance tax audit for the 2005 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 _____, 2009.

Jane Phan
Administrative Law Judge

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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 _____, 2009.

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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