

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 09-2557 Account No. ##### Tax Type: Income Tax Tax Year: 2006 Judge: Marshall
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Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER REP., Representative
PETITIONER

For Respondent: RESPONDENT REP., Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on December 9, 2009. The Taxpayer requested a waiver of the interest assessed as a result of an audit of Taxpayer's 2006 income tax year return. Interest was assessed in the amount of \$\$\$\$\$, and continues to accrue on the unpaid balance.

APPLICABLE LAW

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(13) 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(13) (2009).

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

- (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

Utah Admin. Code R861-1A-42 (2009).

DISCUSSION

Taxpayer is requesting a waiver of the interest assessed as a result of the audit of her 2006 income tax return. Taxpayer does not dispute the tax liability. Taxpayer stated that her 2006 return was prepared at her local Senior Center by a VITA (Volunteer Income Tax Assistance) volunteer, and it was not until later that she was informed by the IRS that some of her income had not been included on the return.

It is the Division's position that interest was properly assessed under Utah Code Ann. §59-10-537(1) because the tax was not paid by the due date of the return. She stated that there were no penalties assessed as part of the audit. The Division's representative argued that there is not reasonable cause to waive the interest because Taxpayer has not shown that there was a Tax Commission error, or that a Tax Commission employee gave her erroneous advice.

The Commission has promulgated Rule R861-1A-42 to set forth the circumstances under which a waiver of penalties or interest will be granted. Rule R861-1A-42 specifically provides, “[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” Taxpayer has not shown there to be an error on the part of the Tax Commission, or that a Tax Commission employee gave her erroneous advice that contributed to the error on her return; rather the error was attributable to a mistake made by a VITA volunteer.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the request for a waiver of the interest assessed for the 2006 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:

Appeal No. 09-2557

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 _____, 2010.

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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.

JM/09-2557.int