

11-818
INCOME
TAX YEAR: 2008
SIGNED: 04-02-2012
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON
GUIDING DECISIONS

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 11-818 Account No. ##### Tax Type: Income Tax Year: 2008 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Taxpayer
 PETITIONER REP., CPA
For Respondent: RESPONDENT REP., from Auditing Division

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 March 14, 2012.

On February 2, 2011, Auditing Division (the "Division") issued a Notice of Deficiency and Audit Change ("Statutory Notice") to PETITIONER ("Petitioner" or "taxpayer") for the 2008 tax year, in which it assessed additional tax and interest (calculated as of March 4, 2011), as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2008	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

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The taxpayer agrees that she owes the \$\$\$\$ of additional tax that the Division assessed. However, she asks the Commission to waive the interest that was assessed because she believes that the tax deficiency arose due to a Tax Commission error, based on the following facts.

In April 2009, the taxpayer submitted a 2008 Utah income tax return. The return was submitted as a “paper” return (i.e., it was not electronically filed). On the return, the taxpayer indicated that she owed \$\$\$\$ in additional tax. The taxpayer included a check in the amount of \$\$\$\$ with her return, which the Tax Commission cashed.

On Part 3 of the TC-40A form that accompanied the return, the taxpayer listed a Utah Educational Savings Plan (“UESP”) credit in the amount of \$\$. The instructions on Part 3 of this form instruct the taxpayer to “add all credits and enter total here and on TC-40, line 22.” The taxpayer did not “total” the credit and enter it into the last line of Part 3 of the TC-40A. Nor did the taxpayer enter the credit on line 22 of the TC-40. Both of these lines were left blank. As a result, when the taxpayer determined her tax liability on the TC-40, she did not claim any UESP credit.

Subsequent to the Tax Commission receiving the paper return, a Processing Division employee “entered” the information shown on the return into a computer file. The Processing Division employee entered the \$\$\$\$ UESP credit that the taxpayer had listed on the TC-40A as a credit that reduced her tax liability, even though the credit was not “totaled” and included in the last line of Part 3 of the TC-40A and even though it had not been carried over to the TC-40. The Processing Division employee’s action resulted in the Tax Commission’s determining a tax liability for the taxpayer that was \$\$\$\$ less than the tax liability that the taxpayer had calculated and reported on the TC-40.

The Division states that on September 16, 2009, the Tax Commission sent the taxpayer a letter in which it informed her that it had adjusted her UESP credit to \$\$. Subsequently, a check for \$\$, plus interest, was issued to the taxpayer, which she cashed. Although the taxpayer received the separately-mailed

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check, she claims that she never received the September 16, 2009 letter from Processing Division. The taxpayer states that she is very careful about keeping all tax documents she receives for her records. Because the September 16, 2009 letter from the Tax Commission is not in her records, she does not believe that she received it. The taxpayer admitted that when she received the check for \$\$\$\$\$, plus interest, she did not inquire as to why she was receiving it.

Upon audit, the Division determined that the taxpayer qualified for a \$\$\$\$\$ UESP credit for 2008, but did not qualify for the \$\$\$\$\$ credit that she received due to the circumstances described above. As a result, the Division assessed the additional tax of \$\$\$\$\$, plus interest. The Division contends that the interest it imposed should not be waived because the \$\$\$\$\$ UESP credit the taxpayer received was not due to a Tax Commission error.

The Division explains that when Processing Division “enters” a paper return, its policy is to enter all amounts listed next to a “dot” on the TC-40A, regardless of whether the taxpayer “totals” the listed amounts on the TC-40A and regardless of whether the taxpayer carries the amounts over to the TC-40. As a result, the Division claims that the Processing Division did not make an error or take an inappropriate action when it entered the \$\$\$\$\$ UESP credit that the taxpayer had listed on the TC-40A. For this reason and because the Tax Commission sent a letter to the taxpayer explaining the change it had made to the taxpayer’s return, the Division does not believe that the circumstances are ones for which interest should be waived.

APPLICABLE LAW

UCA §59-1-401(13) provides that “[u]pon 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 Admin. Rule R865-1A-42(2) (“Rule 42”) provides guidance concerning the waiver of penalties and interest, as follows in pertinent part:

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(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.

UCA §59-1-1417 provides that “[i]n a proceeding before the commission, the burden of proof is on the petitioner. . . .”

DISCUSSION

Section 59-1-401(13) authorizes the Commission to waive, reduce, or compromise interest upon a showing of “reasonable cause.” The Commission has adopted Rule 42 to set forth the circumstances that qualify as “reasonable cause” to waive interest. Rule 42 provides that in order for “reasonable cause” to exist to waive interest, “the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.”

In this case, the taxpayer listed a UESP credit in the amount of \$\$\$\$\$ on Part 3 of the TC-40A form that accompanied her tax return. However, she did not include the credit in the “total” of Part 3 of the TC-40A, and she did not carry the credit over to the TC-40. Although the Tax Commission’s action to “enter” the \$\$\$\$\$ UESP credit that the taxpayer listed on the TC-40A is not inappropriate, the audit assessment at issue would not have arisen had the taxpayer’s return been processed exactly as it was submitted. Under these circumstances, reasonable cause exists to waive the interest that the Division imposed in its audit. For these reasons, all interest at issue in this matter should be waived.

Kerry R. Chapman
Administrative Law Judge

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DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessment, with one exception. The Commission waives all interest that the Division imposed in the assessment. 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.