

11-3185
TAX TYPE: PERSONAL INCOME TAX
TAX YEAR: 2005
DATE SIGNED: 2-20-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING DECISION Appeal No. 11-3185 Account No. ##### Tax Type: Personal Income Tax Tax Year: 2005 Judge: Jensen
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, Taxpayer, appearing by telephone
 TAXPAYER-2, Taxpayer, appearing by telephone
For Respondent: RESPONDENT, for the Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on November 26, 2012 in accordance with Utah Code Ann. §59-1-502.5.

Petitioner (the “Taxpayer”) is appealing the assessment of Utah individual income tax and interest for the 2005 tax year. On January 12, 2012, the Auditing Division of the Utah State Tax Commission (the “Division”) sent a Statutory Notice of Deficiency for the issues before the Commission in this appeal. The Statutory Notice indicated that the Taxpayer owed additional tax and interest as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest¹</u>
2005	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

APPLICABLE LAW

A tax is imposed on the state taxable income of every resident individual for each taxable year. Utah Code Ann. §59-10-104(1) (2005).

¹ Interest continues to accrue on any unpaid balance.

Utah law allows for a credit for taxes paid to another state by a Utah resident with source income in another state:

- (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter equal to the amount of the tax imposed on him for the taxable year by another state of the United States, the District of Columbia, or a possession of the United States, in income derived from sources therein which is also subject to tax under this chapter.
- (2) The application of the credit provided under this section shall not operate to reduce the tax payable under this chapter to an amount less than would have been payable were the income from the other state disregarded
- (3) The credit provided by this section shall be computed and claimed in accordance with rules prescribed by the commission.

Utah Code Ann. §59-10-106 (2005) (the current language of the credit is codified at Utah Code Ann. §59-10-1003).

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.”

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.

The Utah Legislature has provided that the taxpayer generally bears the burden of proof in proceedings before the Tax Commission. Utah Code Ann. §59-1-1417 (2012) provides that “[i]n a proceeding before the commission, the burden of proof is on the petitioner”

DISCUSSION

The January 12, 2012 audit notice at issue in this appeal is the second audit for the 2005 tax year for the Taxpayer. The first audit arose from an error in which the Tax Commission input the Taxpayer’s 2005 Utah tax return incorrectly. The Division sent a statutory notice on the first audit May 22, 2011 and the Taxpayer resolved the issue by filing an amended return on November 16, 2011.

The second audit on January 12, 2012 removed a \$\$\$\$ credit that the Taxpayer had taken for taxes paid to another state. The Taxpayer earned income in STATE in 2005. As the Taxpayer received this income, his STATE employer withheld federal tax and STATE tax. By the end of 2005, the STATE withholding totaled \$\$\$\$\$. The Taxpayer filed a 2005 STATE return, which resulted in a STATE tax refund of the entire \$\$\$\$ amount withheld throughout 2005. On the worksheet for the Utah credit for

taxes paid to another state, the Taxpayer listed \$\$\$\$ as the amount of taxes paid to STATE, but only used \$\$\$\$ as the Utah credit because the total 2005 Utah tax liability was \$\$\$\$.

The Taxpayer's position is that even though he received a refund of the entire \$\$\$\$ amount withheld from his STATE earnings, he is entitled to a Utah credit for taxes paid to another state because he had not filed for nor received the STATE refund at the time he prepared his Utah tax return. He claims that the Commission's error in incorrectly inputting his first 2005 Utah return triggered the need for him to file an amended return. The amended return came after the Taxpayer had filed for and received the STATE refund. The Taxpayer argues that but for the Utah Tax Commission error, he would have been able to keep his original filing date and that his credit for taxes paid to another state would have been correct.

Utah Code Ann. §59-10-106 provides that the Utah credit for taxes paid to another state is based on the amount of taxes "imposed" on the taxpayer by another state. Withholding of taxes is not an imposition of tax. *See* Utah Code Ann. §59-10-529 (2005) (providing for refunds of amounts withheld but not required for tax payments). Thus, taxes withheld but later refunded are not "imposed." Even if the Taxpayer had taken a credit for taxes paid to another state at the time he first filed his Utah return, that credit would have been zero because the Taxpayer had no taxes "imposed" by another state.

The Division imposed interest in connection with its audit on January 12, 2012. Administrative Rule R861-1A-42(2) provides for waiver of interest charges if a taxpayer shows that "the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error" at issue. Applying this rule, there was no Tax Commission action that caused the Taxpayer to claim a credit for taxes paid to STATE when STATE imposed no taxes for 2005. However, the Commission did incorrectly input the Taxpayer's first return. Resolution of this input error delayed discovery of the Taxpayer's error in taking a credit for taxes paid to another state. This delay thus "contributed to the error" that led to the tax underpayment at issue in this case. On that basis, there is good cause to waive interest through 30 days from the date of this order.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the information presented at the hearing, the Commission sustains the Division's audit for the 2005 tax year and waives interest associated with that audit from the due date of the 2005 return through 30 days from the date of this order. 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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner