

14-2315
TAX TYPE: INCOME TAX
TAX YEAR: 2011
DATE SIGNED: 5-21-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 14-2315 Account No. ##### Tax Type: Income Tax Tax Year: 2011 Judge: Nielson-Larios
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Presiding:
Aimee Nielson-Larios, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, by telephone
For Respondent: RESPONDENT, Auditing Division, in person

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on April 16, 2015 for an Initial Hearing in accordance with Utah Code § 59-1-502.5. On November 14, 2014, Respondent (“Division”) issued a Notice of Deficiency and Audit Change assessing the following amounts for the 2011 tax year:

<u>Audit Tax</u>	<u>Audit Interest</u>	<u>Audit Penalties</u>	<u>Audit Total Due</u>
\$4,001.00	\$\$\$\$	\$\$\$\$	\$\$\$\$

Interest was calculated through December 14, 2014, and continues to accrue on any unpaid balance.

Through its audit, the Division disallowed a Utah special needs adoption credit (“Credit”) of \$4,000, which accounted for \$4,000 of the \$4,001 audit tax. The Division also increased by \$6 the Taxpayer’s “State Tax Deducted on Federal Schedule A” which resulted in the remaining \$1 of audit tax. The Taxpayer does not dispute the correctness of the audit changes, but asks the Commission to waive the audit interest based on reasonable cause.

APPLICABLE LAW

The Commission has been granted the discretion to waive penalties and interest. Utah Code § 59-1-401(13) 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 Utah Administrative Code 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 Code § 59-1-1417 provides, “In a proceeding before the commission, the burden of proof is on the petitioner [the taxpayer] ...”

DISCUSSION

The Taxpayer asks the Commission to waive the interest based on his alleged conversation with a Tax Commission employee. The Taxpayer adopted four special needs children from FOREIGN COUNTRY in 2011. The Taxpayer stated that in early 2012, he called the Tax Commission to ask about the special needs adoption credit. He remembers talking with an employee who needed to consult with her supervisor before him with an answer. He remembers talking specifically about his being a foreign adoption, finalized in FOREIGN COUNTRY, and that after the adoption the children were U.S. citizens, being raised in Utah. He remembers that he and the employee discussed how he had met the intent of the law. He remembers the employee saying that the Taxpayer had a defensible position even though he had not met the letter of the law. The Taxpayer remembers the employee recommending the Taxpayer take the Credit. However, the Taxpayer does not remember the names of the employee or the supervisor or the exact date of the alleged conversation.

The Division argues against a waiver of interest based on the Taxpayer’s burden of proof. The Division stated there is no record of the telephone call or the advice given. The Division explained that most conversations are recorded to a Taxpayer’s account. The Division further explained that it is possible to have no record of a call if the Taxpayer did not provide an identification number.

The Commission has discretion under § 59-1-401(13) to waive correctly assessed interest based on reasonable cause shown. Under R861-1A-42(2), the reasonable cause for a waiver of interest occurs when “the [Tax] [C]ommission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” The Taxpayer alleges a Tax Commission employee provided him with erroneous information; however, the Taxpayer lacks details of when the conversation occurred and with whom.

The Commission issued a series of decisions to taxpayers and the Auditing Division, answering whether foreign adoptions qualify for the special needs adoption credit. The appeal numbers and issuance dates of these decisions are as follows:¹

<u>Appeal No.</u>	<u>Date Issued</u>
10-0486	November 17, 2010
10-2068	February 15, 2011
11-2461	March 26, 2012
11-2712	September 28, 2012
12-1694	April 11, 2013
12-1902	April 29, 2014
12-2133	August 13, 2014

The majority opinions in all of these decisions consistently held that foreign adoptions do not qualify for the Credit. In the decision for Appeal No. 11-2712, the Commission waived interest assessed for the 2008 tax year based on a conversation a taxpayer showed to have occurred with a specific Tax Commission employee in January 2007. The conversation in January 2007 happened before any of the above listed decisions were issued. The Taxpayer's alleged conversation in 2012 occurred much later than 2007, and over a year after the first decision, for Appeal No. 10-0486, was issued, about a year after the second decision, for Appeal No. 10-2068 was issued, and possibly also after the third decision, for Appeal No. 11-2461, was issued.

Based on the facts presented and a review of the Commission's prior decisions, the Taxpayer has not shown he had a conversation with a Tax Commission employee about the Credit or that the employee advised the Taxpayer as he remembers. Because of this lack of sufficient evidence about the alleged conversation, the audit interest should be sustained.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer's request for a waiver of interest for the 2011 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, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

¹ Redacted copies of these decisions are available through the Searchable Database of Redacted Decisions located on the following webpage: <http://tax.utah.gov/commission-office/decisions>.

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.