

12-2462
TAX TYPE: INCOME TAX
TAX YEAR: 2006
DATE SIGNED: 8-5-2014
COMMISSIONERS: B. JOHNSON, 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. 12-2462 Account No. ##### Tax Type: Income Tax Tax Year: 2006 Judge: Nielson-Larios
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Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, by telephone
TAXPAYER-2, by telephone

For Respondent: REPRESENTATIVE FOR RESPONDENT, Utah Assistant Attorney
General, in person
RESPONDENT-1, Auditing Division, in person
RESPONDENT-2, Auditing Division, in person

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on July 17, 2014 for an Initial Hearing in accordance with Utah Code § 59-1-502.5.

On February 13, 2012, Respondent (“Division”) issued to Petitioners (“Taxpayers”) a Notice of Deficiency and Estimated Income Tax (“Notice of Deficiency”) for 2006 tax year, showing the following amounts.

<u>Year</u>	<u>Audit Tax</u>	<u>Interest</u>	<u>Penalties</u>	<u>Total</u>
2006	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

Interest was calculated through March 14, 2012. In general, interest continues to accrue on any unpaid amounts. The Taxpayer paid \$\$\$\$\$ through a personal check dated October 8, 2012, which cleared on October 12, 2012. The Utah State Tax Commission issued a Notice of Lien on July 13, 2012, through

which it charged a \$\$\$\$ lien-recording fee. At the initial hearing, the Division explained that the lien and the \$\$\$\$ lien fee have been removed.

The Taxpayers request a waiver of the penalties and interest assessed.

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, available at <http://tax.utah.gov/commission/effective/r861-01a-042.pdf>, to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

- (1) Procedure
 - (a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:
 -
 - (iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission.
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 - (v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.
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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.
- (3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
 - (a) Timely Mailing...
 - (b) Wrong Filing Place...
 - (c) Death or Serious Illness...
 - (d) Unavoidable Absence...
 - (e) Disaster Relief...
 - (f) Reliance on Erroneous Tax Commission Information...
 - (g) Tax Commission Office Visit...
 - (h) Unobtainable Records...
 - (i) Reliance on Competent Tax Advisor:
 - (i) The taxpayer fails to file a return after furnishing all necessary and relevant information to a competent tax advisor, who incorrectly advised the taxpayer that a return was not required.
 - (ii) The taxpayer is required, and has an obligation, to file the return. Reliance on a tax advisor to prepare a return does not automatically constitute reasonable cause for failure to file or pay. The taxpayer must demonstrate that ordinary business care, prudence, and diligence were exercised in determining whether to seek further advice.

- (j) First Time Filer:
 - (i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.
 -
- (k) Bank Error...
- (l) Compliance History...
- (m) Employee Embezzlement...
- (n) Recent Tax Law Change...
- (4) Other Considerations for Determining Reasonable Cause.
 - (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
 - (i) whether the commission had to take legal means to collect the taxes;
 - (ii) if the error is caught and corrected by the taxpayer;
 - (iii) the length of time between the event cited and the filing date;
 - (iv) typographical or other written errors; and
 - (v) other factors the commission deems appropriate.
 - (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
 - (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.
 - (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

Utah Code § 59-1-1417 provides, “In a proceeding before the commission, the burden of proof is on the petitioner [taxpayer] . . .”

DISCUSSION

The Taxpayers explained that they are STATE residents and pay state tax to STATE. They said they were unaware of the Utah tax liability for the 2006 tax year. It is uncontested that the Taxpayers were not required to file and pay Utah tax before or after the 2006 tax year. The Taxpayers do not dispute the \$\$\$\$ audit tax. The \$\$\$\$ Utah tax liability is based on the Taxpayers having Utah source income as shown on a 2006 Form K-1 from a partnership located in Utah. The 2006 tax year was the partnership’s final year. The Taxpayers said the general partner of the partnership did not send them any tax forms for the state of Utah and never informed them of the Utah tax liability.¹ The Taxpayers also said they had a tax professional prepare their annual taxes and that person did not inform them of any Utah tax liability.

The Taxpayers additionally explained that it took a considerable amount of time before they received notice from the Utah State Tax Commission of the 2006 Utah tax liability and that as soon as they were informed they sent a check to cover the deficiency and requested a waiver of the interest and

¹ The Judge notes that a Utah TC-65, Schedule K-1 (“Utah Form K-1”) did not exist for the 2006 tax year. The form has been required starting with the 2010 tax year. See page 1 of “Form TC-65: Tax Return & Instructions,” available online at <http://www.tax.utah.gov/forms/2010/tc-65inst.pdf>.

penalties. Their personal check for \$\$\$\$ was dated October 8, 2012 and cleared on October 12, 2012. They explained they did not receive the notices the Utah State Tax Commission mailed to the CITY, STATE address because the post office did not forward them to their current address. The Taxpayers said they moved in 2007 to their current address and they did not know why the post office did not forward the notices. The Judge notes the Utah State Tax Commission sent its Request for Filing Information and subsequent notices to the CITY, STATE address from October 2011 to July 2012, about four years after the Taxpayers moved from CITY, STATE, to their current address. The Taxpayers said they were later contacted by the Utah State Tax Commission about the tax liability and tax lien, and at that time they corrected their mailing address with the Utah State Tax Commission. The Judge notes that the Division's Exhibit #1 page 16 shows such call took place on October 2, 2012. The Taxpayers also said they checked their credit reports and saw the Utah State Tax Commission made an inquiry. The Taxpayers said that based on this inquiry, they are unsure why the Utah State Tax Commission did not have their correct address. The Taxpayers assert they should have been informed of the Utah liability in an earlier manner. The Taxpayers said they had no intent to defraud the state of Utah.

The Division explained that the Taxpayers have a duty to file a 2006 Utah return; that under Utah law, there is no statute of limitations on non-filing audit assessments; and that the Division assessed penalties and interest according to the Utah statutes.

The Division asserts that the Taxpayers should not be granted a waiver of penalties and interest for two reasons: first, the filing requirement found in R861-1A-42(1)(a)(iii) has not been met because the Taxpayers never filed a 2006 Utah return to replace the Division's estimate; and second, the Taxpayers have not shown reasonable cause for a waiver of interest or penalties as required by R861-1A-42(1)(a)(v).

For interest, the Division contends that the Taxpayers have not shown reasonable cause for a waiver of interest because the Utah State Tax Commission did not take any erroneous actions. The Division discussed how the CITY, STATE address was used for the Auditing Division's notices before another division of the Utah State Tax Commission made an inquiry of the Taxpayers' credit reports and contacted the Taxpayers. The Division explained the Taxpayers did not update their address with the Utah State Tax Commission by filing a Utah return. The Division asserted that the Taxpayers should have known they had Utah source income based on their federal Form K-1, which shows the partnership was a restaurant located in Utah.

For penalties, the Division contends the Taxpayers have not shown reasonable cause for a waiver of penalties under the first-time-filer reason or under the other considerations. For the first time filer, the Division explained that the filing and payment requirements found in R861-1A-42(3)(j) have not been met because the Taxpayers did not file their 2006 Utah return and did not pay the taxes within a reasonable time after the due date. The Division also noted two "other considerations" found in

R861-1A-42(4) that weigh against the Taxpayers. First, under R861-1A-42(4)(a)(ii), the error was not caught by the Taxpayers; and second, for under R861-1A-42(4)(a)(iii), there has been a great length of time between the due date of the 2006 Utah return and the date such return was filed when, as of the initial hearing, Taxpayers still had not filed a 2006 Utah return.

The Taxpayers countered that their failure to file a 2006 Utah return was not an issue previously presented to them in writing and that the Taxpayers no longer have the documents needed to file. They explained that they did file a STATE return for 2006.

The Commission has discretion under § 59-1-401(13) to waive penalties and interest for “reasonable cause shown.” Thus, taxpayers must show reasonable cause to receive a waiver of interest or penalties based on the Utah Code.

The Commission enacted R861-1A-42 to provide additional guidance. However for the procedures found in R861-1A-42(1)(a), the Commission has previously instructed that they do not apply when a taxpayer has timely appealed an audit deficiency. *See* the initial hearing order for Appeal 11-2671, available at <http://tax.utah.gov/commission/decision/11-2671.sanqc.pdf>. On page 4 of that decision, the Commission states:

[T]he Commission considers that the procedural limitations set out at Utah Admin. R861-1A-42(1) apply to penalty and interest appeals through the Taxpayer Services Division, Waiver Unit, and not to those that are appealed with a timely filed audit deficiency appeal.

Thus, because the Taxpayers filed a timely appeal of the audit deficiency, the procedural limitation found in R861-1A-42(1)(a)(iii), requiring a filed return, does not prevent the Taxpayers from receiving a waiver of penalties and interest. However, a showing of reasonable cause is still required by the Utah Code.

For a waiver of interest, the Taxpayers have not shown reasonable cause. The Utah State Tax Commission did not give the Taxpayers erroneous information or take inappropriate action that contributed to the Taxpayers’ errors of failing to file a 2006 Utah return and of failing to timely pay the Utah tax due.

For a waiver of penalties, the Taxpayers have shown reasonable cause for a waiver under § 59-1-401(13). The 2006 Utah return was the first and only Utah return the Taxpayers were required to file, and the Taxpayers relied on a paid professional tax preparer, who prepared their federal and STATE returns, but failed to prepare a Utah return. The Taxpayers explained how they paid the \$\$\$\$ shortly after they were contacted by the Utah State Tax Commission on October 2, 2012. They also explained why they did not receive the prior notices from the Tax Commission at the CITY, STATE address. There is no evidence that the Taxpayers were intentionally avoiding their Utah tax liability. For these reasons, a waiver of penalties is appropriate. The requirement found in R861-1A-42(3)(i)(ii) that a taxpayer must file a Utah return to qualify for “reliance on competent tax advisor” and the requirement found in R861-

1A-42(3)(j)(i) that a taxpayer must file to qualify for “first time filer” do not prevent the Commission from granting the Taxpayers’ waiver request under § 59-1-401(13).

In conclusion, the Taxpayers have shown reasonable cause for a waiver of the penalties assessed for the 2006 tax year, but have not shown reasonable cause for a waiver of the interest.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

For the above reasons, the Commission waives the penalties for the 2006 tax year but does not waive the interest. 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 _____, 2014.

R. Bruce Johnson
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.

12-2462
TAX TYPE: INCOME TAX
TAX YEAR: 2006
DATE SIGNED: 1-21-14
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 AND TAXPAYER-2, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>ORDER DENYING RESPONDENT'S MOTION TO DISMISS</p> <p>Appeal No. 12-2462</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2006</p> <p>Judge: Nielson-Larios</p>
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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 July 25, 2013 for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division based its Motion to Dismiss on the contention that Petitioner's ("Taxpayer") petition for redetermination was not timely filed.

APPLICABLE LAW

Utah Code § 59-1-501 provides that a taxpayer must file a petition for a redetermination of a deficiency within thirty days of the issuance of a notice of deficiency, as follows in pertinent part:

- (2) A person may file a request for agency action, petitioning the commission for redetermination of a deficiency.
- (3) Subject to Subsections (4) through (6), a person shall file the request for agency action described in Subsection (2):
 - (a) within a 30-day period after the date the commission mails a notice of deficiency to the person in accordance with Section 59-1-1405...

Section 59-1-501 also states the following when a taxpayer has not filed a timely petition:

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- (7) A person who has not previously filed a timely request for agency action in accordance with Subsection (3) may object to a final assessment issued by the commission by:
- (a) paying the tax, fee, or charge; and
 - (b) filing a claim for a refund as provided in Section 59-1-1410.

For the mailing of the notice of deficiency under § 59-1-501(3)(a), Utah Code § 59-1-1405(1) states:

Except as provided in Subsection (3) or (5), the commission shall mail a notice of deficiency to a person in accordance with Section 59-1-1404 if the commission finds there is:

- (a) a deficiency in a tax, fee, or charge imposed; or
- (b) an increase or decrease in a deficiency.

Furthermore, Utah Code § 59-1-1404(4) states:

Subject to Subsection (5) [for spouses with separate addresses], if the commission is required to mail a notice to a person under this part, the commission shall mail the notice to the person at **the person's last-known address as shown on the records of the commission.**

(Emphasis added.)

Filing within the thirty-day deadline provided in § 59-1-501(3)(a) is governed by Utah Administrative Code R861-1A-20, which follows in pertinent part:

- (2) Except as provided in Subsection (3), a petition for redetermination must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:
- (a) in the case of mailed or hand-delivered documents:
 - (i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or
 - (ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period; or
 - (b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

Further guidance on the filing deadline is provided in Utah Administrative Code R861-1A-22, as follows in relevant part:

- (1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

DISCUSSION

The Division issued a Notice of Deficiency and Estimated Income Tax for the 2006 tax year (“Statutory Notice”) to the Taxpayer, a non-Utah resident, on February 13, 2012. The Statutory Notice explains the appeals procedures, and instructs that if the Taxpayer disagrees with the audit, he must file a petition within 30 days of the date of the Statutory Notice. The Taxpayer filed his petition for redetermination on October 9, 2012, the date it was postmarked. Along with the petition, the Taxpayer also sent a payment of \$\$\$\$\$, which equals the total audit tax, interest, and penalties due on the Statutory Notice. The Division asserts the Statutory Notice was issued to the Taxpayer’s last-known address and asks the Commission to dismiss the Taxpayer’s appeal because it was not received within the 30-day time period. The Taxpayer challenges the correctness of the address used on the Statutory Notice and seeks a waiver of audit interest, penalties, and lien fees.

The discussion below addresses two separate reasons for denying the Division’s motion to dismiss (A) the Division did not issue the Statutory Notice to the Taxpayer’s last-known address as shown on the Commission’s records and (B) the Taxpayer has paid an amount greater than the \$\$\$\$\$ audit tax due so the petition may remain open as an appeal of a denied waiver request.

A. The Division Did Not Issue the Statutory Notice to the Last-Known Address as Shown on the Records of the Commission; Thus, the Division’s Motion to Dismiss Should be Denied.

The Statutory Notice was issued to the following address:

PO BOX #1
CITY-1, STATE-1 ZIP CODE-1

The Division asserts that this was the Taxpayer’s last-known address when the Statutory Notice was issued. The Taxpayer responded that he did not timely receive the Statutory Notice because the Division issued the notice to his prior address, which he left in 2007. The Statutory Notice was not forwarded from this address to his current address because he left this address 4-5 years before the Statutory Notice was issued. The Taxpayer learned of the Division’s audit after learning the Utah State Tax Commission had filed a tax lien against him.

Through the Statutory Notice, the Division assessed additional audit tax due based on income reported on a Utah K-1 from a partnership located in CITY-2, Utah. This partnership filed its final Utah partnership income tax return (Form TC-65) on April 12, 2007. According to that final return, the Taxpayer was a limited partner owning 1.71% of the partnership’s Utah income. The partnership reported to the Utah State Tax Commission the following address for the Taxpayer:

P.O. BOX #2
CITY-1 STATE-1 ZIP CODE-2

This address does not match the address the Division used for the Statutory Notice. The Taxpayer explained the partnership did not provide him with the Utah K-1 and, likewise, his paid tax preparer did not prepare a Utah income tax return for him to file.

No evidence suggested anyone other than the partnership provided the Utah State Tax Commission with an address for the Taxpayer before the Statutory Notice was issued. There was no evidence presented suggesting the Taxpayer had a filing requirement with Utah before or after the 2006 tax year.

The P.O. BOX #1 address used by the Division on the Statutory Notice matches the address used on many 2006 wage and income forms filed with the IRS and reported on the IRS Wage and Income Transcript for 2006. However, there is no evidence that these forms were also filed with the Utah State Tax Commission. The Division did not know why it used the P.O. BOX #1 address instead of the P.O. BOX #2 address provided by the partnership on the Utah K-1. The Division did not testify whether it reviewed the Taxpayer's most recent federal information for a more current address for the Taxpayer.

The Taxpayer explained that until June or July 2007, he lived in COUNTRY and maintained the CITY-1, STATE-1, addresses—first, P.O.BOX #2; then, P.O. BOX #1. He explained that he changed post office boxes when he needed a larger box, but he would have still received his mail addressed to either post office box until he moved in 2007 to his current address, which is as follows:

ADDRESS
CITY-3, STATE-1 ZIP CODE-3

He explained that this has been his address from July 2007 to the present.

Utah Code § 59-1-1404(4) requires the Utah State Tax Commission to “mail the [Statutory Notice] to the person at the person's last-known address as shown on the records of the commission.” In this appeal, the only address for the Taxpayer that anyone provided to the Utah State Tax Commission was the P.O. BOX #2 address provided in 2007 by the partnership for the 2006 tax year. The Division did not use this address. Furthermore, the Division did not know why it did not use this address. For instance, the Division did not assert it searched records outside of the Utah State Tax Commission and found what reasonably appeared to be a current address for the Taxpayer. Thus, the Division did not meet the requirement found in § 59-1-1404(4) for the last-known address, and its motion should be denied.

B. The Taxpayer Has Paid the \$\$\$\$ Audit Tax Due so the Petition Should Remain Open as an Appeal of a Denied Waiver Request.

The Taxpayer explained that he does not contest the audit tax due of \$\$\$\$\$. In October 2012, he paid \$\$\$\$\$, the audit total due on the Statutory Notice. He explained that he is only seeking a waiver of the audit penalties, audit interest, and lien fees. He asserts the tax lien is improper because he did not

receive the Statutory Notice dated February 13, 2012 or the Notice of Taxes Due and Intent to Lien dated April 13, 2012 since both were sent to the wrong address.

The Division explained that the Taxpayer simultaneously filed his petition for redetermination with the Appeals Unit and a waiver request with the Taxpayer Services Division. The Division explained that the Taxpayer Services Division responded to the Taxpayer's waiver request by issuing a letter dated October 19, 2012, titled "We Are Unable to Consider Your Waiver Request." The Judge interprets this letter as effectively a denial by Taxpayer Services of the Taxpayer's waiver request, possibly because the Taxpayer has not filed a 2006 Utah income tax return to replace the Auditing Division's estimate. The Division argues that the Taxpayer's petition for redetermination was filed too soon to be a timely appeal of the Taxpayer Services Division's denial; the petition was filed on October 8, 2012, before the denial was issued on October 19, 2012.

The Division explained that the Taxpayer filed a second waiver request with the Taxpayer Services Division in November 2012. The Division explained that as of the date of this hearing that request was still under consideration with the Taxpayer Services Division. The Judge believes this second request of the Taxpayer Services Division is on hold pending the resolution of the Taxpayer's appeal. The Division argues that the Taxpayer's petition for redetermination cannot be viewed as an appeal based on this second waiver request because the Taxpayer Services Division has not yet denied that request.

The Division also noted that the Taxpayer did not pay the full audit total due. The Division stated that although the Taxpayer had paid the audit total due of \$\$\$\$ as stated on the Statutory Notice, additional interest had accrued between March 14, 2012 and October 8, 2012. The Division stated that interest was unpaid when the appeal was filed and also was still unpaid at the time of this hearing.

Section 59-1-501(7) allows a taxpayer to appeal a final assessment by "(a) paying the tax, fee, or charge; and (b) filing a claim for a refund as provided in Section 59-1-1410." In an "Order Granting Petitioners' Request for Reconsideration" for Appeal #09-2960, available online at <http://tax.utah.gov/commission/decision/09-2960.recsanqc.doc.pdf>, the Commission addressed whether an appeal should be kept open when a taxpayer did not clearly meet § 59-1-501(1)(b). In that appeal, the taxpayer paid the assessment at issue shortly after a hearing on motion to dismiss was held. The Commission granted the motion to dismiss. The taxpayer then filed a request for reconsideration. The Commission granted the request for reconsideration, reversed its prior dismissal, and stated the following:

The taxpayers have not alleged any mistake of fact or law to show that the Commission's Order to Dismiss was incorrect. As a result, the taxpayers' Request for Reconsideration would, ordinarily, be denied. However, as stated in the Order to Dismiss, the taxpayers are provided an alternative statutory remedy to contest an assessment that

they did not timely appeal. Specifically, the taxpayers are allowed to contest the assessment by paying it and requesting a refund within two years of the payment. The taxpayers paid the assessment at issue in this appeal on February 28, 2010 and, in their Request for Reconsideration, have requested a refund within a month of that payment.

Under these unique circumstances, the Commission will treat the taxpayers' Request for Reconsideration as a request for refund of the assessment they paid on February 24, 2010. As the request for refund has not yet been denied, a petition to the Commission is technically premature. However, the Commission believes it is more efficient to hold this appeal open until the appropriate division has taken action on the refund request. In case the appropriate division denies the refund request, this appeal will already be open for the refund request issue to come before the Commission for a hearing. To this extent, the taxpayers' Request for Reconsideration is granted, and a telephone status conference will be scheduled with the parties to discuss the refund request.

For the appeal at hand, the Taxpayer's appeal may remain open based on § 59-1-501(7) and the above precedent. The Taxpayer has met the requirement of "paying the tax, fee, or charge" found in § 59-1-501(7)(a). He paid an amount greater than the audit tax due. He is not required to pay all interest that has continued to accrue. He has also met the requirement of "filing a claim for a refund as provided in Section 59-1-1410" found in § 59-1-501(7)(b). The Taxpayer's situation is similar to that of Appeal #09-2960. Thus, the Taxpayer's appeal may remain open even though it is technically premature.

C. Conclusion

For the two reasons provided above, the Taxpayer's appeal should remain open to address the Taxpayer's request for a waiver of the audit interest, audit penalties, and lien fee. This appeal will be scheduled for telephone status conference to address the Taxpayer's underlying request.

Before the next telephone status conference, the judge would like the parties to consider how the following Commission decisions might apply to the Taxpayer's waiver request: (1) Initial Hearing Order for Appeal 12-2522 is available online at <http://tax.utah.gov/commission/decision/12-2522.intsanqc.pdf> and grants a waiver of penalties but not interest for a non-Utah resident with a limited partnership interest in a Utah business, and (2) Initial Hearing Order for Appeal #11-2671 is available online at <http://tax.utah.gov/commission/decision/11-2671.sanqc.pdf> and discusses when the procedural limitations found in Utah Administrative Code R861-1A-42(1) are applicable.

Aimee Nielson-Larios
Administrative Law Judge

Appeal No. 12-2462

ORDER

Based on the foregoing, the Commission denies the Division's motion to dismiss. It is so ordered.

DATED this _____ day of _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner