

13-1990
TAX TYPE: INCOME TAX
TAX YEAR: 2006, 2007, 2009 and 2010
DATE SIGNED: 6-26-2014
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
EXCUSED: B. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 AND TAXPAYER-2, Petitioners,</p> <p>vs.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>AMENDED¹ INITIAL HEARING ORDER</p> <p>Appeal No. 13-1990</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2006, 2007, 2009 and 2010</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-2, *Pro Se*
REPRESENTATIVE FOR TAXPAYER, Petitioner's Daughter
For Respondent: RESPONDENT-1, Taxpayer Services Division
RESPONDENT-2, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on February 12, 2014 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioners ("Taxpayers") requested a waiver of the penalties and interest assessed on their Income Tax filings for the 2006, 2007, 2009, and 2010 tax years. For the 2006 tax year, Taxpayers were assessed late filing and late payment penalties totaling \$\$\$\$ and interest in the amount of \$\$\$\$ through the hearing date. For the 2007 tax year, Taxpayers were assessed late filing and late payment penalties totaling \$\$\$\$ and interest in the amount of \$\$\$\$ through the hearing date. For the 2009 tax year, Taxpayers were assessed late filing and late payment penalties totaling \$\$\$\$ and interest in the amount of \$\$\$\$ through the hearing date. For the 2010 tax year, Taxpayers were assessed

¹ The Initial Hearing Order is amended to correct the recitation of the penalties assessed for each of the years at issue. Changes made to the Order will be noted in bold font.

late filing and late payment penalties totaling \$\$\$\$ and interest in the amount of \$\$\$\$ through the hearing date. The Division has denied the request to waive penalties and interest for each year at issue. Interest continues to accrue on any unpaid balance.

APPLICABLE LAW

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §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 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.
- (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...
 - (j) First Time Filer...
 - (k) Bank Error...
 - (l) Compliance History...
 - (m) Employee Embezzlement...
 - (n) Recent Tax Law Change...

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

DISCUSSION

The Taxpayer stated that her husband had always handled the filing of tax returns and payment of tax liability. Her husband passed away in April of 2012, and several months later, she learned that he had not filed returns or paid the tax due for the tax years at issue. The Taxpayer stated that her husband had always used an accountant to help with their taxes. When they were first married, the Taxpayer would sign her name on the returns, but as years went on, she would allow her husband to just sign her name on the returns. She noted that over the years she would ask her husband if the taxes had been taken care of, and he would assure her that they had.

The Taxpayer stated that she wanted to do the right thing and file the taxes. She noted that several people told her that she should file a married filing separate return, as she did not have any income. However, she felt that the returns should be prepared as married filing joint, because she had lived off the money her husband earned. The Taxpayer stated that it took several months to gather the paperwork and file the returns for all of the years. The Taxpayer's daughter noted that they did not know where to look for the paperwork to prepare the returns, and she does not believe that her father intentionally did not file the returns and pay the taxes, but that he was just overwhelmed.

The Taxpayer stated that NAME, a Tax Commission employee, told her that her husband had instructed NAME to only deal with him on the past-due taxes, as he did not want to worry his wife. She stated that when she received the notice of the hearing date, she contacted NAME and asked if she could come to the hearing and testify. The Taxpayer proffered that NAME asked her supervisor, and was told she could not appear at the hearing because it was a conflict of interest.

The Taxpayer stated that her brother-in-law, father-in-law, and mother all passed away in 2011. In addition, her husband was diagnosed with cancer the same year. The Taxpayer provided copies of her medical records from 2006 through 2010. She noted that the IRS waived the penalties and interest for the 2006 and 2011 tax years. She stated that she is still waiting to hear on the other years. The Taxpayer stated that she is also working with the Taxpayer Advocate and has requested innocent spouse relief from the IRS.

The Division's representative confirmed that the Taxpayer did have a conversation with NAME. She stated that the notes on the account history indicate that the Taxpayer's husband did ask NAME to keep the delinquencies confidential and not to tell his wife. The Division's representative stated that the Taxpayer should be seeking innocent spouse relief, rather than requesting a waiver. She stated that the account history shows that there was an auditor handling some of the years at issue, and the notes indicate that requesting innocent spouse relief would be the best option for the Taxpayer to pursue. The Division's representatives reviewed innocent spouse relief with the Taxpayer, and explained how the request process works through the State.

The Division's representative stated that when they received the Taxpayer's waiver request, it appeared that it was trying to request innocent spouse relief, and did not specifically indicate any of the circumstances outlined in Publication 17 as reasonable cause for a waiver of penalties. She stated that they looked to see if the Taxpayer would qualify under the "fresh start" program, but determined the Taxpayer did not qualify because the Tax Commission had taken legal action with liens and garnishments for the years at issue. The Division's representative stated that they do not believe there is reasonable cause to waive the penalties; she stated that

there was nothing wrong with the Taxpayer trusting that her husband would file the returns; however, in allowing her husband to sign her names on the returns, it removed one of the “checks and balances” that would have made the Taxpayer aware that returns had not been filed for the years at issue. The Division’s representative stated that there was no Tax Commission error, and thus no reasonable cause to waive the interest assessed.

In closing, the Taxpayer stated that she never worked, and did not earn her own income. She noted that even now she lives off of her husband’s social security death benefits. She stated that they had filed every year for forty-six years, and she does not know why her husband stopped filing returns and paying taxes.

The Commission has promulgated Administrative Rule R861-1A-42 and Publication 17 to outline the circumstances the Commission may consider “reasonable cause” justifying a waiver of penalties. The death or serious illness of a taxpayer, or a member of the taxpayer’s immediate family may be reasonable cause warranting a waiver of penalties. Subsection (3)(c)(iii) of Administrative Rule R861-1A-42, specifically provides, “[t]he death or illness must have occurred on or immediately prior to the due date of the return.” The Taxpayer noted that her brother-in-law, father-in-law, and mother all passed away in 2011. However, she did not provide information on the dates of their passing, so it is unknown whether those occurred on or immediately prior to the due date of the 2010 return. In reviewing the medical records provided by the Taxpayer, she was diagnosed with endometrial cancer and underwent a hysterectomy between March 28, 2007 and May 7, 2007. This is a serious illness, and did occur right around the timeframe that the 2006 income tax return would have been due. There is reasonable cause to waive the penalties assessed for the 2006 tax year. Unfortunately, there does not appear to be reasonable cause to waive the penalties for the remaining tax years at issue. The Taxpayers’ compliance history shows that for the 2003, 2004, and 2005 tax years, no return was filed and penalties were assessed for those years. Thus, a waiver cannot be granted based on good compliance history.

Taxpayer has also requested a waiver of interest. With regard to the waiver of interest, 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.” The Taxpayer has not shown there to be an error on part of the Tax Commission or a Tax Commission employee. There is not reasonable cause to waive the interest assessed for the years at issue.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission grants a waiver of the penalties assessed for the 2006 tax year; denies the request for a waiver of penalties assessed for the 2007, 2009, and 2010 tax years; and denies the request for a waiver of interest for each of the years. 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.