

14-1232  
TAX TYPE: INCOME TAX  
TAX YEAR: 2010  
DATE SIGNED: 10-9-2015  
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL  
EXCUSED: J. VALENTINE  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYER-1 AND TAXPAYER-2,  Petitioners,  vs.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 14-1232</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2010</p> <p>Judge: Phan</p>
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative, By Telephone  
TAXPAYER-1, By Telephone  
TAXPAYER-2

For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 22, 2015, for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioners (“Taxpayers”) had filed an appeal contesting a Notice of Deficiency and Estimated Income Tax issued against them by Respondent (“Division”) on April 14, 2014. The audit tax due as stated in the notice was \$\$\$\$\$, plus penalties of \$\$\$\$\$, and interest as of the date the notice was issued of \$\$\$\$\$. Interest continues to accrue through the appeal process until the amount due is paid in full. At the hearing, it was discussed that the Taxpayers had made a payment of \$\$\$\$\$ when they originally filed and paid their Utah Income Tax Return for 2010. The Representative for the Division acknowledged that the Taxpayers should have credit for this payment. Once credit for the \$\$\$\$\$ is allowed to reduce the tax balance, the interest was recalculated to the date of the hearing at \$\$\$\$\$, and the penalties \$\$\$\$\$, for a total balance of \$\$\$\$\$. The Taxpayers did not contest the

tax balance after application of the \$\$\$\$ payment. The Taxpayers did ask at the hearing that the penalties be waived.

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

#### DISCUSSION

The Taxpayers had timely filed a 2010 Utah Individual Income Tax Return using the special instruction provisions for when one spouse was a resident of Utah for tax purposes and the other was resident of another state.<sup>1</sup> They had relied on an accountant to prepare the Utah return and had filed the return by the April 15, 2011 deadline. On the return, they had calculated tax due to Utah in the amount of \$\$\$\$ and had paid that amount with the return. For the Taxpayers,

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<sup>1</sup> These provisions were available in 2010 for spouses residing in different states, but effective for tax year 2012 may no longer be available based on the passage of Utah Code Sec. 59-10-136.

TAXPAYER-2 was filing as a resident of Utah and TAXPAYER-1 indicated he was a resident of STATE-1. TAXPAYER-1 had filed an STATE-1 return for the 2010 tax year and had paid taxes to STATE-1 based on that return in the amount of \$\$\$\$\$.

When the Division reviewed the account, it concluded that the Taxpayers should have filed a married filing joint return instead of under special instructions. The representative for the Division explained at the hearing that when the Division performed this audit, the return actually filed by the Taxpayers was reversed out of the “system,” so the “system” considered it to be a non-filing audit and automatically added 10% failure to file timely and 10% failure to pay timely penalties. Although not explained by the Division’s representative, it appears that in addition to the penalty, when the return was reversed out, the Statutory Notice did not recognize the \$\$\$\$\$ payment made by the Taxpayers when they had filed their Utah return. The Utah audit did allow a credit in the amount of \$\$\$\$\$ for the taxes paid to STATE-1. After some further review on the part of the Taxpayer, TAXPAYER-1 and his representative concluded that some additional tax was owed to Utah based roughly on the amount indicated by the audit. However, they were concerned they had not been given credit for the \$\$\$\$\$ previously paid and that the failure to file and failure to pay penalties had been assessed, when they had, in fact, filed a Utah return on time and paid the tax due on the return.

The representative for Respondent indicated that he was not opposed to waiver of the penalties due to these circumstances and also that the Taxpayers had a good filing history previously. He also agreed that the Taxpayers needed to be given credit for the \$\$\$\$\$ payment they had made when the original Utah return was filed.

Upon review of the information provided at the hearing, there is reasonable cause for waiver of the penalties that were assessed based on account history and the fact that the Taxpayers had timely filed a return and paid taxes on the due date of that return. However, there is no basis for waiver of the interest. With waiver of the penalties and a credit for the \$\$\$\$\$ payment previously made by the Taxpayers, the balance due on this account for the 2010 tax year should be reduced to \$\$\$\$\$ in additional tax and interest of \$\$\$\$\$, for a total due of \$\$\$\$\$.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission waives the penalties assessed with the audit and orders the Division to provide the credit for taxes paid in the amount of \$\$\$\$ as noted above on this account. 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:

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

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
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. The Taxpayers may contact the Taxpayer Services Division, at (801) 297-7703 to make payment arrangements.**