

08-1925
Audit
Signed 12-30-08

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 AND PETITIONER 2

Petitioner,

v.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 08-1925

Account No. #####

Tax Type: Income Tax

Tax Year: 2005

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER 1, *Pro Se*

PETITIONER 2, *Pro Se*

For Respondent: RESPONDENT REP, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on November 13, 2008. The Taxpayers requested a waiver of the penalties and interest assessed as a result of an audit on their 2005 income tax return. Taxpayer filed an amended return as a result of the audit, which has been accepted by the Division. As of December 3, 2008, there was an outstanding tax liability of \$\$\$\$\$, a late payment penalty of \$\$\$\$\$, and interest in the amount of \$\$\$\$\$, for a total of \$\$\$\$\$. Interest continues to accrue on the unpaid balance.

APPLICABLE LAW

Section 59-1-402(5) of the Utah Code provides, “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.” Utah Code Ann. §59-1-402(5) (2005).

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(11) 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.” Utah Code Ann. §59-1-401(11) (2005).

DISCUSSION

In 2005, PETITIONER 2 won \$\$\$\$ in the STATE lottery. Federal tax was withheld in the amount of \$\$\$\$ and STATE state tax was withheld in the amount of \$\$\$\$\$. The Division performed an audit of the Taxpayers’ return upon receiving information from the IRS. The Division’s audit did not give Taxpayers credit for the taxes paid to another state. Taxpayers submitted an amended Utah return, claiming credit for the taxes paid to STATE. The amended return had not been processed as of the hearing date, but was ultimately accepted by the Division.

Taxpayers are requesting a waiver of the penalties and interest on the grounds that the return was prepared by COMPANY A, and they relied upon their advice and knowledge in the preparation of their 2005 return. Taxpayers testified that (X) and (X) of COMPANY A telephoned the Tax Commission to inquire as to how to treat the lottery winnings, and they were told that Utah did not tax lottery winnings. Taxpayers stated that had they known they needed to report the income, they would have paid the tax liability when they filed their return.

The Division’s representative stated that interest was properly assessed pursuant to Utah Code Ann. §59-10-537(1) and §59-1-402(5). She noted that though the Commission has the authority to waive penalties and interest, that under Rule R861-1A-42(1)(a), certain conditions must be met before a waiver can be requested. All tax owed must be paid, penalties and interest must be assessed on a filed return, there was no prior waiver for the tax period, and there must be reasonable cause. It is the Division’s position that because the Taxpayer has not yet paid the outstanding liability, a waiver cannot be granted.

The Commission is granted the discretion to waive penalties and interest pursuant to Utah Code Ann. §59-1-401. The Commission has issued Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs>, which sets forth the factors the Commission may consider in determining whether “reasonable cause” exists for the waiver of penalties or interest. Among those factors identified is reliance on a competent tax advisor. Taxpayers testified that they had COMPANY A prepare their return for the 2005 tax year, as they had in prior years. While the Division argued that a waiver could not be granted because Taxpayers have not paid the outstanding tax liability, the Commission has previously held that such a waiver can be granted when the request is made during an appeal of an audit deficiency. Under the circumstances, the Commission finds there is reasonable cause for the waiver of the late payment penalty in the amount of \$\$\$\$.

Taxpayers have also requested a waiver of the interest assessed. Publication 17 provides, “[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the Tax Commission gave you erroneous information or took inappropriate action that contributed to the error.” Taxpayers offered testimony that their tax preparers telephoned the Tax Commission and inquired as to the treatment of lottery winnings, and were told that Utah does not tax lottery winnings. The Division’s representative stated that the Taxpayers’ account history does not show that the Taxpayers called in; but noted that it likely would not show up if Liberty Tax called and asked a general question. Publication 17 provides that proof of erroneous information provided by the Tax Commission can be based on written or verbal communication. Verbal communication must be clearly documented, which would include dates, times, and the name of the Commission employee who provided the information. The Taxpayers offered no such documentation. The Commission finds that there is not reasonable cause to waive the interest assessment.

DECISION AND ORDER

Based on the foregoing, the Commission finds that reasonable cause has been shown to justify a waiver of the penalties; however, the Taxpayer has not shown reasonable cause to justify a waiver of the interest associated with Taxpayer’s income tax filing for the 2005 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 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 _____, 2008.

Jan Marshall
Administrative Law Judge

Appeal No. 08-1925

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

JM/08-1925.int