

11-219
INCOME
TAX YEARS: 2007-2008
SIGNED: 01-05-2012
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioners,

v.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 11-219

Account No. #####

Tax Type: Income Tax

Tax Year: 2007 & 2008

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1

For Respondent: RESPONDENT REP., Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5 on January 3, 2012. The matter had originally been scheduled for a Telephone Status Conference but was converted to a hearing for purposes resolving the only issue that was unresolved between the parties. Petitioners (Taxpayers) had timely filed an appeal of a deficiency resulting from an individual income tax audit for tax years 2007 and 2008. The Statutory Notices of Deficiency and Audit Change had been issued on December 12, 2010. After the notices were issued, the Taxpayers filed amended returns for each year at issue and sent in the payment indicated on the amended returns. The Division has now accepted the amended returns and posted the returns over the audit for each year. For tax year 2007 the amount of the Utah individual income tax on the amended return was actually higher than the original audit deficiency. Both the Taxpayer and the Division are in agreement with the tax amount indicated on the amended returns. However, the Division reports that an automatic penalty had been posted to the account for the 2007 tax year in the amount of \$\$\$\$\$. It is this penalty that was still at issue at the hearing. This penalty was not assessed by

the Division.

APPLICABLE LAW

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 Sec. 59-1-401(13).

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...

DISCUSSION

The Division's representative explained that the penalty had been added, while this account was still in the appeal process, because when the Taxpayer had filed his amended return for 2007, although he had sent in payment for the tax amount, he had not included an amount for the interest. Because payment is applied first to penalty and interest and then to tax, this indicated a tax balance owed on the account. The Division's representative explained that this was an automatic processing penalty and not an Auditing penalty assessed by the Division. He also indicated that because this was still in appeals no billing for the interest would have been sent to the Taxpayer.

The Taxpayer explained that he was unaware that he should have contacted the Tax Commission to have the interest calculated and to send the interest with the payment. He indicated that he did not receive any

Appeal No. 11-219

billing letting him know what the interest was and when he would have needed to pay the amount. He also explained that the amended returns had been prepared by a tax professional and this person did not tell him he would need to contact the Tax Commission to obtain an interest calculation. Additionally, he pointed out that his amended return for the 2007 tax year had actually indicated a higher tax amount than the audit deficiency for that year.

Upon review of this issue, there is cause for waiver of the penalty. While this matter is in appeals the Taxpayer is not required to pay the tax amount until the appeal has been resolved by an order from the Tax Commission. The appeal had not yet been resolved so the Taxpayer had essentially made a payment earlier than he was required to do so. This is further complicated by the fact that while in appeals, no billing statements are generated, so the Taxpayer would not have received a billing for the interest in time to pay it before the penalty was assessed. There is reasonable cause for waiver of the \$\$\$\$ in penalties. The underlying tax and interest deficiency of the audit has been resolved based on the Division's acceptance of the Taxpayer's amended returns. The Taxpayer should contact the Taxpayer Services Division at 801 297-7703 to obtain a payoff balance of the remaining interest and make payment arrangements.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the \$\$\$\$ in penalties. 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

Appeal No. 11-219

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

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael Cragun
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. Petitioners may contact the Taxpayer Services Division about setting up a payment plan, at (801) 297-7703.