

11-2441
INCOME TAX
TAX YEARS: 2008 & 2009
SIGNED: 07-02-2012
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 AND PETITIONER 2,

Petitioners,

v.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 11-2441

Account No. #####

Tax Type: Income Tax

Tax Year: 2008 and 2009

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER REP., EA, Representative

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on June 11, 2012, for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioners (“Taxpayers”) had filed this appeal of Utah Individual Income Tax audit deficiencies for tax years 2008 and 2009. The Statutory Notice of Deficiencies for each year had been issued on July 20, 2011. However, as of the date of the hearing the Taxpayers were no longer contesting the audit amount of the tax and interest, which they had paid. The remaining issue for the hearing was the Taxpayers request that the penalties be waived. For each tax year there had been a 10% failure to file and 10% failure to pay penalty under Utah Code Sec. 59-1-401. The penalties for 2008 totaled \$\$\$\$ and for 2009 \$\$\$\$.

APPLICABLE LAW

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(13) 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.”

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 representative for the Taxpayers asked that the penalties be waived based on reliance on a competent tax advisor. He explained that PETITIONER 2 had been retired in 2008 and 2009 and that she had a CHRONIC CONDITION. Based on a recommendation from her doctor, she purchased a house in STATE 1 because of the lower elevation and warmer climate, where she spent much of her time. PETITIONER 1 remained in Utah. PETITIONER 2 relied on the advice of a STATE 1 tax accountant who told her that she did not need to claim her retirement income on a Utah return. PETITIONER 1 filed a Utah return for each year at issue, claiming special instructions, which are permitted when one spouse is a Utah resident and one spouse a non-resident. When their Utah returns for 2008 and 2009 were audited, the Division concluded that PETITIONER 2 remained a Utah resident for individual income tax purposes, so her income was subject to Utah tax, which the Taxpayers no longer contest.

The representative for the Division explained that the penalties had been system generated and the Division would not have assessed them under normal circumstances. The

Division had considered that the Taxpayers filed Utah returns for both years, using the special instructions. However, in order to issue the audit they had to reverse out these returns on the system to process the Taxpayers' audit as joint filers, both with Utah residency. Because the filed returns were reversed out, the system considered the Taxpayers to be non-filers and added the failure to file and failure to pay penalties. The Division's representative also noted that prior to 2008 the Taxpayers had a good account history.

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 representative for the Taxpayer noted one justification that is applicable in this matter, reliance on a competent tax advisor. Also the Taxpayer has previously had a good account history. Further, it appears that the penalties were issued because of a computer system processing issue, and not because the Division intended to assess them. The penalties for both years should be waived in their entirety.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission grants Taxpayers' request for a waiver of penalties assessed with the 2008 and 2009 Utah individual income tax audit. 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

Appeal No. 11-2441

D'Arcy Dixon Pignanelli
Commissioner

Michael J. 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.