

12-1969
TAX TYPE: PENALTY AND INTEREST
TAX YEAR: 2010
DATE SIGNED: 2-27-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 12-1969 Account No. ##### Tax Type: Penalties & Interest – Income Tax Tax Year: 2010 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearing:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Representative
For Respondent: RESPONDENT-1, from Taxpayer Services Division
 RESPONDENT-2, from Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 28, 2013 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5.

TAXPAYER requested a waiver of the penalties and interest that she incurred on her individual income tax account for the 2010 tax year. On May 29, 2012, the Taxpayer Services Division (the “Division”) issued a Waiver Decision in which it denied a waiver of both the penalties and the interest.

The taxpayer did not file her 2010 tax return and pay her 2010 tax liability until February 6, 2012. The penalties at issue total \$\$\$\$ and consist of late filing and late payment penalties. As of the date of the hearing, the interest at issue totals \$\$\$\$\$. The taxpayer admits that the penalties and interest were properly imposed. However, she asks for them to be waived because of personal circumstances that prevented her from filing and paying her 2010 state income taxes on time.

The taxpayer, who lives in Utah, was at her family's home in STATE from November 2010 through July 2011 (including the April 15, 2011 date when 2010 Utah income taxes became due) because of the illnesses and subsequent deaths of both her (X-1) and (X-2). The taxpayer's (X-1) passed away in December 2010, and her (X-2) passed away in January 2011. The taxpayer remained in STATE until July 2011 to help care for her (X-3) and to handle her (X-1) and (X-2) estates. The taxpayer was also in an ACCIDENT on her way back to Utah in July 2011. Because of the accident, she was put on MEDICATION and had to see a chiropractor.

The taxpayer had hoped to rely on her now ex-husband to assemble her 2010 income tax information and get it to REPRESENTATIVE FOR PETITIONER, her accountant, in time for REPRESENTATIVE FOR PETITIONER to complete the 2010 return by April 15, 2011. REPRESENTATIVE FOR PETITIONER explained that the taxpayer has numerous businesses and that she counted on her husband to help with the books in her absence. REPRESENTATIVE FOR PETITIONER further explained that the taxpayer's husband would not return her calls and essentially "disappeared" until August 2011, at which time he and the taxpayer legally separated. Because of these events, the taxpayer asks the Commission to waive the penalties and interest she has incurred for the 2010 tax year.

The Division stated that it denied the request to waive interest because there was no Tax Commission error, which is required before interest can be waived pursuant to Utah Admin. Rule R861-1A-42(2) ("Rule 42").

The Division stated that it also determined that "reasonable cause" to waive penalties did not exist under Rule 42(3). The Division stated that it first considered whether penalties could be waived under Rule 42(3)(c), which provides that "reasonable cause" to waive penalties may exist because if the "death or serious illness" of a taxpayer or a member of the taxpayer's immediate family caused the delay. The rule also provides that the death or illness must have occurred on or immediately prior to the due date of the return. The Division contends that the taxpayer's circumstances do not qualify as "reasonable

cause” under this specific subsection of the rule because neither the taxpayer’s (X-1) nor (X-2) passed away “immediately prior to” the April 15, 2011 date on which 2010 taxes were due.

The Division next considered whether the taxpayer’s penalties could be waived under Rule 42(3)(l), which provides that a taxpayer’s recent history of payment and filing may be considered when determining whether to waive penalties. Because the taxpayer’s 2008 and 2009 income taxes had both been filed and paid late, the Division determined that “reasonable cause” also did not exist under this subsection of the rule to waive penalties. For these reasons, the Division asks the Commission to sustain its denial of the request to waive penalties and interest.

APPLICABLE LAW

Utah Code Ann. §59-1-401(13) provides that “[u]pon 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 Utah Admin. 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:
 - (i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.
 - (ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.
 - (iii) The death or illness must have occurred on or immediately prior to the due date of the return.
- (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:
 - (i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.
 - (ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.
 - (m) Employee Embezzlement...
 - (n) Recent Tax Law Change...
- (4) Other Considerations for Determining Reasonable Cause.
- (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
 - (i) whether the commission had to take legal means to collect the taxes;
 - (ii) if the error is caught and corrected by the taxpayer;
 - (iii) the length of time between the event cited and the filing date;
 - (iv) typographical or other written errors; and
 - (v) other factors the commission deems appropriate.
 - (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
 - (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.
 - (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

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

DISCUSSION

Section 59-1-401(13) authorizes the Commission to waive penalties upon a showing of reasonable cause. The Commission has promulgated Rule 42 and USTC Publication 17 to outline the circumstances that the Commission may consider “reasonable cause” to justify a waiver of penalties and interest.

Penalties. The taxpayer’s 2008 and 2009 income taxes were also filed and paid late. As a result, the taxpayer’s compliance history is insufficient to warrant a waiver of the 2010 penalties at issue under Rule 42(3)(1).

Remaining at issue is whether the taxpayer’s circumstances qualify as “reasonable cause” to waive penalties under Rule 42(3)(c). This subsection provides that delays caused by the death or illness of a family member may qualify as “reasonable cause” to waive penalties if the death or illness occurred

on or immediately prior to the due date of the return. In this case, the taxpayer's (X-1) and (X-2) both passed away more than three months before her 2010 taxes were due on April 15, 2011. Their deaths were not "immediately prior" to the due date of the taxpayer's 2010 return. However, there are other related circumstances to consider, such as the taxpayer's absence from Utah due to her (X-3) fragile condition and her handling of her (X-1) and (X-2) estates. In addition, she had also relied on her ex-husband to gather her tax information and submit it to her accountant, which did not occur. These circumstances, however, are countered by the fact that the taxpayer did not timely file and pay her taxes timely either in 2008 or 2009, years in which the circumstances affecting the filing of her 2010 taxes did not occur. When the totality of these circumstances are weighed, the Commission believes that reasonable cause exists to waive one-half of the 2010 penalties. Accordingly, the Commission should grant a waiver of \$\$\$\$ of the 2010 penalties at issue and deny the request to waive the remaining \$\$\$\$ of 2010 penalties.

Interest. Interest is assessed because the taxpayer has had use of money that should have previously been paid to the Tax Commission. The criteria to waive interest are more stringent than the criteria to waive penalties. In accordance with Rule 42(2), interest is waived only if a taxpayer shows that the Commission gave erroneous information or took inappropriate action that contributed to the error. No such error or inappropriate action exists in this case. Accordingly, the Division's determination that "reasonable cause" to waive interest does not exist should be sustained.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission grants a waiver of one-half of the 2010 penalties at issue and denies the taxpayer's request to waive the other half of the 2010 penalties. Specifically, the Commission waives \$\$\$\$ of penalties and denies a waiver for the remaining \$\$\$\$ of penalties. In addition, the Commission denies the taxpayer's request for a waiver of interest. 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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner