

12-2219  
TAX TYPE: INCOME TAX- PENALTY AND INTEREST  
TAX YEAR: 2011  
DATE SIGNED: 4-26-2013  
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO  
EXCUSED: B. JOHNSON

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BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 12-2219</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2011</p> <p>Judge: Marshall</p>
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearing:**

For Petitioner: TAXPAYER, *Pro Se*, via telephone  
For Respondent: RESPONDENT, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 31, 2013 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (“Taxpayer”) requested a waiver of the penalties and interest assessed on its Income Tax filing for the 2011 tax year. Taxpayer was assessed late payment penalties totaling \$\$\$\$ and interest in the amount of \$\$\$\$ for the periods at issue.

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 Taxpayer stated that she usually uses her federal refund to pay her state tax liability each year. However, last year, she had to use those funds to pay for catastrophic damage to her home caused by a windstorm in 2011. She stated that she had to replace her roof, and she had a large pine tree that was knocked over and cut up and taken away. She stated that she also had to get new tires on her car. The Taxpayer stated that she had to use her federal refund, her savings, and take out a loan to pay the \$\$\$\$ out-of-pocket expense for the roof repairs. The Taxpayer asked for relief on the grounds that she was unable to pay the tax at the time it was due because of other financial obligations.

The Division’s representative stated that when they reviewed the request, she checked to see if the windstorm referenced by the Taxpayer had been added to the disaster relief fund, but it had not. She stated that the Division does not generally consider financial hardship as “reasonable cause” to waive penalties and interest because there are other programs in place for individuals with financial hardship. The Division’s representative stated that they also looked at the Taxpayer’s compliance history, but were unable to waive the penalties as a first-time error. The Taxpayer had been assessed a late payment penalty for the 2009 tax year, which the Division had previously waived as a first-time error.

In rebuttal, the Taxpayer stated that she was unaware there are programs in place to help those with financial hardship.

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 Taxpayer has not requested a waiver based on any of the circumstances set forth in Administrative Rule R861-1A-42. Rather, the Taxpayer has requested a waiver of penalties on the basis of financial hardship, indicating she was unable to pay the tax liability on the due date because of other expenses. The Commission generally does not consider financial hardship as “reasonable cause” for a waiver of penalties, as there are other programs in place to assist those who are unable to pay their tax liability in full by the due date. The Taxpayer has not shown reasonable cause to waive the penalties.

Taxpayer has also requested a waiver of interest. With regard to the waiver of interest, Rule R861-1A-42 specifically provides, “[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” The Taxpayer has not proven an error on part of the Tax Commission or a Tax Commission employee, therefore the interest should not be waived.

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Jan Marshall  
Administrative Law Judge

**DECISION AND ORDER**

Based on the foregoing, the Commission denies the Taxpayer’s request for a waiver of penalties and interest assessed on her 2011 Income Tax filing. 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

Appeal No. 12-2219

Michael J. Cragun  
Commissioner

Robert P. Pero  
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.