

12-2463
TAX TYPE: INCOME TAX
TAX YEAR: 2009
DATE SIGNED: 6-4-2013
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	ORDER GRANTING SUMMARY JUDGMENT, DISMISSING APPEAL Appeal No. 12-2463 Tax Type: Income Tax Tax Year: 2009 Judge: Phan
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STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on a Motion for Summary Judgment, filed by Respondent (“Division”) on April 12, 2013. Petitioner (“Taxpayer”) filed a Response to the Motion on April 30, 2013. The Division filed its Reply Memorandum on May 7, 2013.

MATERIAL FACTS NOT IN DISPUTE

1. Taxpayer filed a joint Utah Individual Income Tax Return with NAME on April 15, 2010, as married filing jointly. On the return the taxpayers reported tax due in the amount of \$\$\$\$\$.
2. Taxpayer and NAME did not pay the tax due as reported on the return, but instead sent in \$\$\$\$\$ with the return as partial payment.
3. On December 15, 2010, the Division issued a Statement of Account for Delinquent Taxes. The taxpayers responded to this notice by letter dated December 28, 2010, in which they specifically identified the notice by date and letter number. The taxpayers indicated in a letter they wanted to file an amended return and set up an installment payment plan.
4. NAME eventually set up a monthly payment plan with the Division. She stopped making payments under the plan and a Notice of Default was issued on September 18, 2012. Taxpayer filed a Petition for Redetermination on October 10, 2012. On the form he listed the Notice of Default dated September 18, 2012 as the action that he was appealing. On the Petition he states “I would like threat of a lien or property seizure removed. I would like the amount owed reduced to \$\$\$\$\$. I have attached a

letter that was sent December 2010. I had made repeated attempts to make contact with no answer and pen. fees adding up. \$\$\$\$ has been paid toward this.”

APPLICABLE LAW

Utah Code §59-1-501(2) provides that Taxpayer’s may file an appeal as follows:

A person may file a request for agency action, petitioning the commission for redetermination of a deficiency.

...

However, deficiency does not include the tax amount reported by a taxpayer on a return at Utah Code 59-1-1402(3) “deficiency” is defined as follows:

“Deficiency” means: (a) the amount by which a tax, fee or charge exceeds the difference between: (i) the sum of: (A) the amount shown as the tax, fee, or charge by a person on the person’s return: and (B) any amount previously assessed, or collected without assessment, as a deficiency; and (ii) any amount previously abated credited refunded or otherwise repaid with respect to that tax, fee or charge.

A penalty for failure to pay tax when it is due is assessed under the provisions at are set out at Utah Code Sec. 59-1-401(3).

Interest 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 Sec. 59-1-402 (6).)

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).)

Penalties and interest are part of a taxpayer’s liability, but not a deficiency. Utah Code Sec. 59-1-1402(5) provides:

“Liability” means the following that a person is required to remit to the commission:

- (a) tax, fee, or charge; . . .
- (d) interest that accrues in accordance with Section 59-1401; or
- (e) a penalty that accrues in accordance with Sections 59-1-401. (.)

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:

- (1) Procedure.
 - (a) A taxpayer may request a waiver of penalties or interest for reasonable cause

under Section 59-1-401 if the following conditions are met:

- (i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver; (ii) the total tax owed for the period has been paid; (iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission . . .
- (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

Factors that seemed to be in dispute between the parties are that the Division contends it had sent notices¹ regarding the deficiency to the Taxpayer and at least one telephone call and received no response from the Taxpayer. The Taxpayer argues that they did not receive notices or the telephone call. The Taxpayer contends that he had made numerous attempts to contact the Division or Tax Commission about setting up a payment plan and got no answer or no response. Additionally, the Taxpayer asserts that NAME had stopped making payments because she did not think they were being credited to this account and had been unable to get a response from the Tax Commission to her calls asking about her payments.

1. The Division provided a copy of a Notice of Tax Due and Intent to Lien letter, dated August 13, 2012, regarding the unpaid balance which included penalties for late payment and interest. This letter was addressed to the taxpayers at ADDRESS-1, CITY-1,Utah. The Taxpayer states that they did not receive this letter and that they had moved to STATE in June 2010. The Division provided a copy of a Notice of Lien letter dated October 15, 2010. This had been mailed certified. Taxpayer states they did not receive this notice and the Division stated that the certified letter had been unclaimed. This letter had been addressed to ADDRESS-2, CITY-2, STATE AND ZIP CODE.

However, these factors are not material to whether the Commission has jurisdiction to hear the Taxpayer's Petition for Redetermination filed to appeal a Notice of Default from a payment plan.

The Division filed its Motion for Summary Judgment arguing there is no factual or legal basis for the Taxpayer's request. The Division cites Utah Rule of Civil Procedure 56(c), which provides summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

The Division notes in its Memorandum in support of Motion, pg. 3, ". . . To the extent TAXPAYER is using the Petition for Redetermination to request some other form of relief, the Division has not taken any action that merits appeal." Under Utah Code §59-1-501(2) a taxpayer may petition for redetermination of a deficiency. However, the tax amount reported on a return filed by a taxpayer is not a deficiency. See Utah Code 59-1-1402(3). A penalty was assessed in this matter under Utah Code 59-1-401(3)(a)(i) because the taxpayers failed to pay the tax due on the return that they had filed on or before the due date of April 15, 2010. Interest was assessed under Utah Code 59-1-402(3) from the date that the tax was due and will continue to accrue on any unpaid balance until paid in full. The Taxpayer may not petition the commission for redetermination of the tax amount which was reported by the Taxpayer on the return that the Taxpayer had filed, nor petition for redetermination regarding notices or liens issued in the collection of that amount. The Taxpayer does have the right to file a waiver request regarding penalties and interest to the Taxpayer Services Division under Utah Code 59-1-401(13) and Admin. Rule R861-1A-42. However, under Admin. Rule R861-1A-42 he must pay the amount of the tax before the waiver request is accepted. Admin. Rule R861-1A-42 provides what would constitute reasonable cause for waiver of penalties and interest.

One contention made by the Taxpayer in response is that they had paid \$\$\$\$ towards this deficiency and requested that the amount be reduced to \$\$\$\$\$. As of September 18, 2012, the Division had indicated that the balance was \$\$\$\$\$. Interest continues to accrue on the unpaid balance. The current balance was not provided by the Division.

Based on the material undisputed facts, there is no action on the part of the Division that the Taxpayer may petition the Tax Commission for redetermination at this time. The Summary Judgment should be granted and this appeal dismissed. The Taxpayer does not have the right to appeal tax balances claimed on a return, nor the notices or liens that are issued for collection of that balance. If a taxpayer feels a return that he or she had filed is incorrect, the Taxpayer may file an amended return. If the Taxpayer feels he has a reasonable cause basis for waiver of penalties and interest, the Taxpayer may file

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a waiver request once the tax amount has been paid.

Jane Phan
Administrative Law Judge

ORDER

Based on the foregoing, Summary Judgment is granted in favor of the Division and the appeal dismissed. It is so ordered. The Commission requests that the Division provide an accounting to the Taxpayer of the current balance due that shows each payment that has been made as well as the penalties and the interest that has accrued on the balance. Additionally, the Division is to provide to the Taxpayer contact information for the person that the Taxpayer may contact Taxpayer Services Division (801-297-7703) about setting up a monthly payment plan.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and 63G-4-401 et seq.