

13-1460
TAX TYPE: INCOME TAX PENALTY AND INTEREST
TAX YEAR: 2009 AND 2010
DATE SIGNED: 10-25-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2,

Petitioners,

v.

TAXPAYER SERVICES DIVISION
OF THE UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 13-1460

Account No. #####

Tax Type: Income Tax

Tax Year: 2009 and 2010

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearing:

For Petitioner: TAXPAYER-1, By Telephone Conference Call

For Respondent: RESPONDENT, Tax Compliance Agent

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 10, 2013, for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioners (“Taxpayers”) request a waiver of the penalties and interest assessed on their Income Tax filings for the 2009 and 2010 tax years. Taxpayers were assessed penalties totaling \$\$\$\$ and interest in the amount of \$\$\$\$ for the 2009 tax year. For the 2010 tax year the amount of the penalties assessed were \$\$\$\$ and interest \$\$\$\$.

Interest continues to accrue on the unpaid balance.

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: (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...

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

DISCUSSION

The Taxpayers are joint filers. TAXPAYER-1 was present by telephone at the hearing and requested waiver of the penalties. He explained that TAXPAYER-2 had been diagnosed with (X) in February of 2009. In April or May of that year she underwent a complicated surgery to remove a large (X-1). The surgery was complicated due to the location and size of the (X-1) and required a complete (X-2) and (X-3). He indicated that his spouse had spent months in bed recovering from the surgery. They had a ##### old child at the time and he was overwhelmed with trying to take care of all the household responsibilities by himself. He indicated that filing a tax return was the last thing on his mind during this time period. Additionally, he stated that the

situation continues to impact them to this day and has caused them serious financial hardship from the medical expenses and lost time at work.

The Taxpayer maintains that even though the surgery had occurred almost 1 year before the 2009 return was due and two years before the 2010 return was due, they were unable to file the returns because of the impact of this medical situation. He pointed to the provisions for waiver of penalties based on reasonable cause for serious illness. The Taxpayer also stated that the Internal Revenue Service had waived the penalties for 2009 and 2010 for the late filing and payment of the federal taxes and argued that the state should follow the IRS.

The representative for the Division (“Respondent”) acknowledged that under Administrative Rule R861-1A-42(c) there is a provision for waiver based on serious illness, but pointed out that the rule requires that the illness must have occurred on or immediately prior to the due date of the return. In this case the medical situation occurred just prior and continued through the due date of the 2008 return. The tax years at issue in this appeal are 2009 and 2010. The Taxpayer had filed and paid within the extension period for the 2008 tax year, but had not made a large enough prepayment, so that an extension penalty had been assessed for that year. The Division, however, had already waived the 2008 extension penalty.

The Division’s representative stated that the Division considers a taxpayer’s account history in determining whether to waive penalties or interest and noted in this case the Taxpayers had failed to file timely the years from 2002 through 2007 and penalties had been assessed for all of those years, but were waived under the “Fresh Start” program. Also the Division’s representative pointed out that although under the federal waiver the IRS considers financial hardship, financial hardship is not a basis for waiver under Utah Administrative Rule R861-1A-42(c).

Utah Administrative Rule R861-1A-42 outlines the circumstances the Commission may consider “reasonable cause” justifying a waiver of penalties. The circumstances provided by the Taxpayer do not constitute reasonable cause. The Taxpayers have a history of late filing and/or late payment every year from 2002 to 2010, with the exception of tax year 2008. The Commission understands that TAXPAYER-2 medical situation was very difficult for both of the Taxpayers, but it had occurred around the time that the 2008 tax return was due and the Taxpayers filed that return within the extension period. Given the account history, there is no basis for waiver of the 2009 and 2010 tax years. The Commission does not consider financial hardship as a reasonable cause for waiver under Utah Administrative Rule R861-1A-42.

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.” There was no indication in this matter of a basis for waiving interest.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies Taxpayer’s request for a waiver of penalties and interest assessed on the 2009 and 2010 Utah Individual Income Tax filings. 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

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.