

14-790
TAX TYPE: INCOME TAX
TAX YEAR: 2010
DATE SIGNED: 8-26-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, R. PERO
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,

Petitioner,

vs.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 14-790

Account No. #####

Tax Type: Income Tax

Tax Year: 2010

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, CPA
TAXPAYER

For Respondent: RESPONDENT-1, Manager, Income Tax Auditing
RESPONDENT-2, Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on August 14, 2014 for an Initial Hearing in accordance with Utah Code §59-1-502.5. The matter had been scheduled for a Telephonic Status Conference, but was converted to the Initial Hearing. Petitioner (Taxpayer) had appealed a Notice of Deficiency issued against him for the tax year 2010. After the Notice of Deficiency, the Taxpayer provided some additional information about how the amount of the tax should be calculated. Although not technically an amended return, this information had been processed like an amended return. The representatives for Respondent (Division) and the Taxpayer had discussed the changes made to the account by the Division. The Division explained that taking into account the final adjustments and the payments already made by the Taxpayer, the current balance was now \$\$\$\$\$ in tax and \$\$\$\$\$ in interest, the Taxpayer agreed to this

revised tax amount. The Division had not assessed a penalty with the audit originally, but because the Taxpayer's additional information had been processed as if it was an amended return, penalties were added in the amount of \$\$\$\$\$. The Taxpayer asked at the hearing for waiver of the penalties.

APPLICABLE LAW

Utah law provides for penalties where returns are filed late or payment has been made late at Utah Code Sec. 59-1-401 which provides in pertinent part:

- (I) person that files a return after the due date as described in Subsection (2)(a) is subject to the penalty described Subsection 2(c)(ii); and (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is subject to the penalty described in Subsection (3)(b)(ii). Utah Code Sec. 59-1-401(1)(a)(ii)(B).

Interest on any underpayment or deficiency of any tax or fee administered by the Commission is provided at Utah Code Sec. 59-1-402(6) as follows:

Interest on any underpayment, deficiency, or delinquency of a tax, fee, or charge shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

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).

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...

DISCUSSION

The Taxpayer had made an inadvertent error on his 2010 originally. This was caught by the Division in an audit and now the parties were in agreement as to the tax amount due. The penalties, now at issue were not assessed by the Division, but added by the “system” after the Division processed additional information supplied by the Taxpayer as if it was an amended return. The information was not technically an amended return but had been provided by the Taxpayer’s representative to show how he thought the tax should have been calculated.

The Division’s representative indicated that he did not have the authority to waive the penalties, but noted that the Taxpayer had a good account history as this was a first error for the Taxpayer. Pursuant to Utah Administrative Rule R861-1A-42 there is basis to waive this penalty based on compliance history. There may also be basis to abate this “system” imposed penalty as even if it were appropriate for the computer system to add a penalty if an amended return was filed during the course of a timely filed appeal, which does not appear to be the case, the Taxpayer had not actually filed an amended return.

The Taxpayer did not request waiver of interest. Interest was appropriately imposed as the Taxpayer had made an error on his originally filing and had not paid the correct amount of tax when it was due in April 2011. Interest is imposed from when the tax was originally due to when the balance is paid. The criteria for waiver of interest are more stringent. Under Utah Administrative Rule R861-1A-42 interest is waived only if there was a Tax Commission or Tax Commission employee error that caused the failure to pay timely. In this matter the Taxpayer had made an error which caused him to underpay when the tax was due.

From the information presented by the parties the penalties should be abated. The revised tax amount and interest upheld for the 2010 tax year.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission abates the penalties assessed against the Taxpayer for the 2010 filing. The revised tax and the interest accrued thereon are sustained.

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

Appeal No. 14-790

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 _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.