

14-1621
TAX TYPE: INCOME TAX
TAX YEAR: 2010 and 2011
DATE SIGNED: 2-2-2015
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
EXCUSED: J. VALENTINE

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 14-1621</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2010 and 2011</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, *Pro Se*
For Respondent: RESPONDENT, Waivers Unit, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 8, 2015 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (“Taxpayer”) requested a waiver of penalties and interest. For the 2010 tax year, Taxpayer was assessed late filing and late payment penalties totaling \$\$\$\$\$, and interest in the amount of \$\$\$\$\$. For the 2011 tax year, Taxpayer was assessed late filing and late payment penalties totaling \$\$\$\$\$, and interest in the amount of \$\$\$\$\$. The Respondent (“Division”) waived the penalties assessed for the 2010 tax year. As of the hearing date, all balances had been paid.

APPLICABLE LAW

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §59-1-401(13) 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 from 2009 through 2013 she was doing a fellowship at the University of STATE-1. Initially, she believed that the fellowship was not taxable because no taxes had been taken out, and when she did an internet search, it indicated that a fellowship may or may not be taxable. She stated that she asked a couple of people at her office, but they did not know whether it was taxable because no one had had that particular fellowship previously. She stated that in 2013, she worked in STATE-2, and was required to file a return. In preparing that return, she came across a question asking about 1098-T income. This caused her to look into the issue for prior years. She stated that she went to an accountant who helped her prepare the returns, and that the accountant sent in letters with the returns asking to have penalties and interest waived. The Taxpayer stated that there was no real guidance given about the fellowship being taxable, that her error was unintentional, and that as soon as she discovered the error, she did file the returns and pay the tax liability. She stated that she now understands the interest cannot be waived, and is requesting just a waiver of penalties.

It is the Division’s position that there is not reasonable cause to waive the penalties. The Division’s representative stated that it is a taxpayer’s responsibility to review all documents and determine whether there is a tax liability. She noted that the periods were not audited, that the Taxpayer discovered the error on her own, and she believes the Taxpayer could have made that

determination sooner through due diligence. She stated that the Division waived the 2010 penalties as a first-time error.

When asked, the Taxpayer stated that she had filed tax returns prior to 2010. However, she had always had W-2 income, had never had a fellowship before, and her online research indicated it may not be taxable. Since tax was not being withheld, she assumed it was not taxable. She stated that she did receive a 1098-T for 2013. She does not recall receiving a 1098-T for prior years, but admitted that she received so many emails regarding tuition that it may have been among them and she did not recognize it as a tax document. She explained that for her 2013 1098-T, she received an email with a link. She called to request the prior year's documents, and was told they were available online.

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 does not meet any of the specific circumstances outlined in Administrative Rule R861-1A-42 for a waiver of penalties. However, the Taxpayer does meet the qualifications for a waiver of penalties under the "fresh start" program. The Taxpayer had not previously filed tax returns for the years in question, she voluntarily came forward with the information and filed the returns, the Tax Commission had not taken any legal action against the Taxpayer, and the Taxpayer has paid the tax and interest due. Under the circumstances, there is reasonable cause to waive the penalties assessed.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission waives the penalties assessed for the 2010 and 2011 tax years. 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, or emailed, 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

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2015.

John L. Valentine
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.