

16-313
TAX TYPE: INCOME TAX
TAX YEAR: 2014
DATE SIGNED: 8-3-2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 AND TAXPAYER-2,</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>INITIAL HEARING ORDER</p> <p>Appeal No. 16-313</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2014</p> <p>Judge: Nielson-Larios</p>
---	---

Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, by telephone

For Respondent: RESPONDENT-1, Taxpayer Services Division, in person
RESPONDENT-2, Taxpayer Services Division, in person

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on June 28, 2016, for an Initial Hearing in accordance with Utah Code Ann. § 59-1-502.5. On February 9, 2016, Respondent (“Division”) issued Petitioner (“Taxpayer”) a Waiver Decision, in which the Division denied the Taxpayer’s request for a waiver of the penalties and interest for the 2014 tax year. The penalties for the 2014 tax year include an extension penalty of \$\$\$\$ and late payment penalties of \$\$\$\$\$, for total penalties of \$\$\$\$\$. The interest for the 2014 tax year was calculated through May 23, 2016, and totaled \$\$\$\$\$. In general, interest continues to accrue on any unpaid balance. The Taxpayer appeals the Division’s denial of the request for a waiver of penalties and interest for the 2014 tax year.

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 Utah Administrative Code R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

- (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: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.
 - (e) Disaster Relief...
 - (f) Reliance on Erroneous Tax Commission Information...
 - (g) Tax Commission Office Visit...
 - (h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.
 - (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(1) provides, "In a proceeding before the commission, the burden of proof is on the petitioner [taxpayer] ..."

DISCUSSION

The tax year at issue is 2014. The Taxpayer filed his 2014 state tax return on October 15, 2015. Based on that return, he had tax of \$\$\$\$\$ and a withholding credit of \$\$\$\$\$, resulting in a balance owed of \$\$\$\$\$ before penalties and interest. He paid \$\$\$\$\$ on November 2, 2015. The Taxpayer incurred interest, an extension penalty of \$\$\$\$\$, and a late payment penalty of \$\$\$\$\$, which amounts were unpaid as of the Initial Hearing. The penalties total \$\$\$\$\$.

For the Taxpayer's prior compliance history, he filed his 2013 state tax return on Friday, October 17, 2014. Based on that return, he had tax of \$\$\$\$\$, a withholding credit of \$\$\$\$\$, and a refundable credit of \$\$\$\$\$, resulting in a balance owed of \$\$\$\$\$ before penalties and interest. Also on October 17, 2014, the Taxpayer paid \$\$\$\$\$. For the 2013 tax year, he incurred interest, an extension penalty of \$\$\$\$\$ and a late payment penalty of \$\$\$\$\$. The penalties totaled \$\$\$\$\$. The Taxpayer paid the amounts owing through a series of monthly payments ending in December 2015.

For the 2012 tax year, the Taxpayer filed his state tax return on October 15, 2013. Based on that return, he had tax of \$\$\$\$\$ and a withholding credit of \$\$\$\$\$, resulting in a balance owed of \$\$\$\$\$

before penalties and interest. Also on October 15, 2013, the Taxpayer paid \$\$\$\$\$. For the 2012 tax year, he incurred interest, an extension penalty of \$\$\$\$\$, and a late payment penalty of \$\$\$\$\$. The penalties totaled \$\$\$\$\$. The Taxpayer paid the amounts owing through a series of monthly payments ending in February 2015.

The Taxpayer explained that during 2014 he performed worked for the federal government as an independent contractor training military forces in FOREIGN COUNTRY. He explained that for the years before 2015 he had been in FOREIGN COUNTRY for eight to ten months each year. He explained he returned to the United States on April 15, 2015, at 10:30 p.m. He explained that he had an extension filed with the IRS. The Judge thinks that this extension was the automatic 6-month extension that is granted when a taxpayer files a Form 4868. As explained in IRS Publication 54: Tax Guide for U.S. Citizens and Resident Aliens Abroad, this 6-month extension extends the time allowed for taxpayers to file their returns but does not extend the time allowed for them to pay any balances owed.

The parties also discussed an automatic 2-month federal extension of time for filing and paying federal taxes. Under this extension, certain people living outside the United States qualify for a 2-month extension to file and pay their federal tax. The 2-month federal extension is discussed in IRS Publication 54. This publication explains two situations for which certain taxpayers qualify for the 2-month federal extension. The publication also explains that to make the election for the 2-month federal extension, a taxpayer “must attach a statement to [his or her] [federal] return explaining which of the two situations listed earlier qualified [him or her] for the extension.” For people who qualify for this 2-month federal extension, the federal interest is calculated from the original due date of the return and the federal late payment penalties are calculated starting two months after the original due date of the return. The Division noted that regardless of whether the 2-month federal extension applied to the Taxpayer’s federal return in 2014, the Taxpayer did not file or pay his 2014 state taxes by June 15, 2015. The Taxpayer made his \$\$\$\$\$ payment on November 2, 2015, about 4½ months after June 15, 2015. The Taxpayer asserts, though, that the Utah penalties should be calculated as of June 15, 2015, rather than as of April 15, 2015.

The Taxpayer explained that his employer did not withhold state taxes as he had expected. He explained that he learned that his employer had not withheld state taxes for the 2013 tax year, so he requested withholding for the 2014 tax year. The Taxpayer explained that he had thought his employer had withheld for all of the 2014 tax year until he prepared his 2014 taxes. Then, he learned that his employer only withheld taxes from May-December 2014. The Division thinks the Taxpayer was able to know his employer only withheld taxes from May-December 2014 based on his paystubs and bank deposits. The Taxpayer disagreed explaining how his paystubs were not readily available and his bank deposits varied greatly based on his hours worked. He also explained that because of the hours he

worked, he lacked time to contact his employer during the employer's limited hours. The Division noted that the Taxpayer has had a history of inadequate withholding. The Division also questioned the relevance of this circumstance involving the employer's withholding.

The Taxpayer also asserted that in April 2015 he lacked the information he needed to correctly report his business income for the 2014 tax year. The Taxpayer explained he owns two businesses that are unrelated to his work training military in FOREIGN COUNTRY. He has BUSINESS-1, through which he prepares taxes for people working outside the country. He also owns a BUSINESS-2. He explained that the income from these two businesses varies greatly from year to year. He explained the records for these businesses were incomplete by April 15, 2015. He explained that he did not know how to calculate his required prepayments for these businesses without first having the completed business records. The Division questioned how the Taxpayer could not know how to calculate his required prepayment when he is a tax professional. The Division explained that the prepayment calculation is located in the Utah TC-40 Instructions for the 2014 tax year, page 2. These instructions state in part:

Extension of Time to File

TIP: This is NOT an extension of time to pay your taxes – it is an extension of time to file your return.

You automatically get an extension of up to six months to file your return. Utah does not have an extension form. However, penalties will be assessed if you have not met the prepayment requirements by the original due date (see the following section).

See *Penalties and Interest* instructions on page 3. All extension returns must be filed by Oct. 15, 2015.

Prepayment Requirements for Filing Extension

You must prepay by the original due date:

- 90 percent of your 2014 Utah tax due (TC-40 line 27 plus line 30);
- 100 percent of your 2013 Utah tax liability (TC-40 line 27 plus line 30 of your 2013 Utah return); . . .

You may prepay through withholding (W-2, TC-675R, 1099-R, etc.), payments applied from previous year refunds, tax credits and credit carryovers, or payments made by the tax due date using form TC-546, Individual Income Tax Prepayment Coupon, or online at taxexpress.utah.gov. Interest is assessed on unpaid tax from the original filing due date until the tax is paid in full. Penalties may also apply.

The Division asserted that the IRS has a similar prepayment requirement for Form 4868. The Division noted that Form 4868 states:

CAUTION: Although you are not required to make a payment of the tax you estimate as due, Form 4868 does not extend the time to pay taxes. If you do not pay the amount due by the regular due date, you will owe interest. You may also be charged penalties. . . .

The Division explained that the Tax Commission assessed the penalties for the 2014 tax year because the Taxpayer failed to make his required prepayment. The Division explained that without the prepayment, the Taxpayer did not have a valid state extension under the Utah Code.

The Division explained that it could not waive the penalties assessed for the 2014 tax year based on the Taxpayer's prior compliance history. For his previous history, the Taxpayer explained through a written submission that, in prior years, he had not realized his employer had not withheld state taxes and also he had expected a big loss from the BUSINESS-2 business. He further explained that he made payment agreements for the prior years and he paid off the state tax due in accordance with those agreements. During the hearing, the Taxpayer explained that he had lacked the time he needed to challenge the penalties the Tax Commission had assessed for the years prior to 2014 because of his time commitments for his work out of the country.

Overall, the Taxpayer explained he feels the penalties are unfair under his circumstances. He explained that he had taken steps to have his employer withhold for the 2014 tax year. He also explained that for the 2014 tax year, he paid shortly after filing his return the amount of taxes owing according to that return.

For the penalties assessed, the Taxpayer has not shown the Division incorrectly imposed or incorrectly calculated those penalties. Although the parties discussed the law for the 2-month federal extension, the Taxpayer did not explain why a 2-month federal extension would also allow him a 2-month state extension. The Judge is unaware of a 2-month extension in state law for filing and paying state taxes. Furthermore, assuming that such a 2-month state extension piggybacks off a 2-month federal extension, the Taxpayer still did not show he attached the required statement to his federal return to receive the automatic 2-month federal extension. Thus, the Taxpayer did not show the state tax penalties were incorrectly imposed or calculated.¹

The Commission has promulgated Utah Administrative Code R861-1A-42 and Publication 17 to outline the circumstances the Commission may consider "reasonable cause" justifying a waiver of penalties. For this appeal, the Taxpayer has not shown reasonable cause for a waiver of penalties for the 2014 tax year.

The Taxpayer's situation does not meet the reasonable cause of unavoidable absence. The wife had joint responsibility with the Taxpayer to file the return, and she was not shown to be absent from the state.

The Taxpayer's situation does not meet the reasonable cause of unobtainable records, even after considering that the Taxpayer had incomplete business records on April 15, 2015. The calculation for the

¹ The Judge notes that the extension penalty of \$\$\$\$ was calculated in part by using the number of days the Taxpayer filed after the April 15, 2015 due date.

extension payment was clearly stated in the 2014 Utah TC-40 Instructions. Additionally, the Taxpayer should have understood the state extension payment requirement because he owns and runs an accounting and tax service business. To avoid incurring the extension penalty, the Taxpayer always had the option of making a timely extension payment calculated using his prior year's tax liability. For the 2014 extension payment, the Taxpayer's prior year's tax liability would have been his liability for the 2013 tax year. The Taxpayer knew his 2013 tax liability by April 15, 2015, which was the deadline for his 2014 extension payment.

The Taxpayer's situation does not meet the reasonable cause of having a good compliance history. The Taxpayer incurred the extension penalty and the late payment penalty for the two tax years immediately prior to the 2014 tax year at issue.

The Taxpayer has also requested a waiver of interest. With regard to the waiver of interest, administrative rule R861-1A-42 specifically provides, "Grounds 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." No evidence shows the Tax Commission gave the Taxpayer incorrect information or took inappropriate action that caused the Taxpayer to untimely pay his 2014 taxes. Thus, interest should not be waived.

In summary, penalties and interest should not be waived for the 2014 tax year. Reasonable cause has not been shown.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's Waiver Decision, denying a waiver of the penalties and interest for the 2014 tax year. 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 _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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.