

19-1075

TAX TYPE: INCOME TAX

TAX YEAR: 2012

DATE SIGNED: 1/13/2020

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 & TAXPAYER-2</p> <p>Petitioners,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 19-1075</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2012</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1

For Respondent: RESPONDENT

STATEMENT OF THE CASE

This appeal came before the Utah State Tax Commission on DATE, 2019 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Procedurally, the appeal is unusual. A prior audit notice had been issued of Petitioners' ("Taxpayers") 2012 Utah income tax liability. Respondent ("Division") had issued the original Notice of Deficiency and Audit Change on DATE, 2017, assessing \$\$\$\$ in tax, \$\$\$\$ in penalties and \$\$\$\$ in interest. The Division had also issued Notices of Deficiency for tax years 2013 through 2015 at the same time. The Taxpayers appealed the Notices of Deficiency for 2012 through 2015, Appeal No. 18-67 was opened and an Initial Hearing was held on DATE, 2018. The Tax Commission issued its *Initial Hearing Order* in *Appeal No. 18-67* on DATE 2018, in which the Tax Commission reversed the audits for tax years 2013 through 2015 in their entirety. For tax year 2012, the Tax Commission found that the Taxpayers were part-year Utah resident individuals, ordering the Division to amend the audit accordingly. The Tax Commission also waived all remaining penalties for tax

year 2012, but upheld the interest. Neither party requested a Formal Hearing, so the *Initial Hearing Order Appeal No. 18-67* became final. The Division indicates it attempted to work with the Taxpayers to re-calculate the 2012 audit based on the Tax Commission's part-year determination in *Appeal No. 18-67*, but the Taxpayers became nonresponsive. The Division finally issued the amended Notice of Deficiency based on the Tax Commission's decision in *Appeal No. 18-67*, on DATE, 2019. This notice reduced the audit tax to \$\$\$\$\$. However, it still included penalties, which were \$\$\$\$\$, as well as interest. The Taxpayers appealed the amended audit notice on DATE, 2019 and a new appeal was opened, which is Appeal No. 19-1075, the appeal that is the subject of this hearing. After discussion at a Telephonic Status Conference, the Taxpayer stated that he was only contesting the penalties and the interest so it is the penalties and the interest that are the subject of this hearing.

APPLICABLE LAW

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §59-1-401(14) 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...
- (4) Other Considerations for Determining Reasonable Cause.
 - (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

- (i) Whether the commission had to take legal means to collect the taxes;
 - (ii) If the error is caught and corrected by the taxpayer;
 - (iii) The length of time between the event cited and the filing date;
 - (iv) Typographical or other written errors; and
 - (v) Other factors the commission deems appropriate.
- (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
- (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for a waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.
- (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

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

DISCUSSION

At the Initial Hearing in the subject appeal, the Taxpayer explained that he was unaware that he would still be domiciled in Utah for part of 2012 because he had moved to STATE-1 and he was living and working there. He also indicates that he did file and pay STATE-1 taxes. He argued for waiver of the interest on the basis that he did not know about owing the 2012 tax until Utah contacted him years later in 2017.

At the hearing, the Division agreed to waiver of the penalties, noting that penalties were often waived in domicile appeals. The Division’s representative stated that the Division cannot waive interest, that interest may only be waived in the event of Tax Commission error and it has previously been held that as long as the audit was issued within the statute of limitations, the time it took to issue the audit did not constitute Tax Commission error.

After reviewing the parties’ arguments in this matter and the Tax Commission’s *Initial Hearing Order, Appeal No. 18-67*, at page 16, the Tax Commission has already issued its decision regarding the penalties and the interest that had accrued up to the time of that decision and that decision has become final. There was no basis to revise the *Appeal No. 18-67* order presented by the parties in the subject appeal. In *Appeal No. 18-67*, the Tax Commission ordered the penalties for 2012 be waived and that the interest be sustained. The Tax Commission also had found the tax amount should be revised based on a part-year residency finding and had ordered the Division to adjust the audit accordingly in its *Appeal No. 18-67* order issued DATE, 2018. The Division did not adjust the audit until it issued the Amended Notice of Deficiency on DATE,

2019, and when it issued the amended audit, the Division did not waive the penalties as Ordered in *Appeal No. 18-67*.

The penalties should have been waived based on the prior order, so should not have been included in the amended audit. Although, there is no new basis to waive the interest that had accrued up through the time the decision in *Appeal No. 18-67* had been issued, the fact that the Division had not waived the penalties pursuant to the order contributed to the Taxpayer filing this second appeal, the matter being scheduled for a new hearing, and the issue taking several more months to be resolved. This is basis for waiver of the portion of the interest that has accrued after the issuance of the Order in *Appeal No. 18-67*. It would be general practice for the Division to have to wait thirty-days before recalculating the tax amount based on the Tax Commission's decision, because of the law allowing either party to request a Formal Hearing, and another thirty-days after that time period had expired to actually issue the amended audit would not be inappropriate. In this case, however, the amended audit was issued DATE, 2019, more than five months after the decision was issued in *Appeal No. 18-67*, thus causing more interest to accrue as well as including penalties that should have been waived. On that basis, the portion of the interest that has accrued since DATE, 2018 up through thirty-days after the date of this order is issued should be waived.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission waives the penalties assessed against the Taxpayers regarding their individual income tax for tax year 2012 and waives the portion of the interest that has accrued or will accrue on the revised 2012 tax amount for the period from DATE, 2018 up through thirty-days after the date of this order. 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 _____, 2020.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
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.