11-2494
TAX TYPE: INCOME TAX
TAX YEAR: 2005
DATE SIGNED: 2-8-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 11-2494 Account No. ##### Tax Type: Income Tax Year: 2005 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER, Taxpayer
For Respondent: RESPONDENT, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on January 16, 2013.

TAXPAYER ("Petitioner" or "taxpayer") has appealed Auditing Division's (the "Division") assessment of Utah individual income tax for the 2005 tax year. On August 16, 2011, the Division issued a Notice of Deficiency and Estimated Income Tax for the 2005 tax year, in which it imposed additional taxes, penalties and interest (calculated through September 15, 2011), as follows:

Year	Tax	Penalties	Interest	Total
2005	$$$$$	$$$$$	$$$$$	$$$$$

The Division issued the assessment because the taxpayer had not filed a 2005 Utah income tax return. Since the appeal was opened, the taxpayer has filed a 2005 Utah return that shows that his 2005 tax liability is

$$$$$ instead of the $$$$$ amount that was assessed. The Division has accepted the return and agrees that the amount of tax that is due is $$$$$. Accordingly, the amount of tax due is resolved. Remaining at issue is the taxpayer's request for the Commission to waive penalties and interest.

The Division explained that the penalties and interest originally assessed are now much lower because it agrees that the tax due is much lower than originally assessed. As of the hearing date, the penalties now total $$$$$, and the interest totals $$$$$ (interest continues to accrue while amounts that are due remain unpaid).

The taxpayer asks the Commission to waive the penalties and interest because he hired an "on-line" Internet company to electronically file his 2005 federal and Utah tax returns and because they failed to file his returns and pay the tax due. The taxpayer explains that in early 2006, he filled out his federal and Utah returns on-line and gave the Internet company his debit/credit card information so that the company could charge its fees for filing the returns and pay the federal and state taxes that were shown due on the returns. He stated that he was deployed to FOREIGN COUNTRY later in 2006 and never checked to see if the tax payments had been posted to his account. He stated that he was not aware that the Internet company had not filed his 2005 returns and paid the taxes that were due until he received the Division's Statutory Notice in 2011, at which time he contacted the Internal Revenue Service and discovered that his 2005 federal return had also not been filed. Given these circumstances, the taxpayer asks the Commission to waive the penalties and interest that are still due.

The Division states that it has no objection to the penalties being waived because the taxpayer has been filing Utah returns since 1998 with no other late filings and no other problems. The Division stated, however, that interest is not waived unless there has been a Tax Commission error and that no such error exists in this case. As a result, the Division recommends that interest not be waived.

APPLICABLE LAW

UCA §59-1-401(13) (2013) provides that "[u]pon 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 Admin. Rule R865-1A-42 ("Rule 42") (2013) provides guidance concerning the waiver of penalties and interest, as follows in pertinent part:

> (1) Procedure.
> (a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:
> (i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;
> (ii) the total tax owed for the period has been paid;
> (iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;
> (iv) the taxpayer has not previously received a waiver review for the same period; and
> (v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.
> . . . .
> (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:
> . . . .
> (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.
> . . . .

UCA §59-1-1417 (2013) provides that the burden of proof is upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

> In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:
> (1) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;

> (2) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
> (3) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income;
> (a) required to be reported; and
> (b) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

Pursuant to Section 59-1-401(13), the Commission is authorized to waive penalties and interest upon a showing of "reasonable cause."

Penalties. Rule 42(3)(l) provides that a taxpayer's "compliance history" may constitute reasonable cause to waive penalties. For years other than 2005, the taxpayer has an excellent compliance history. For this reason and because the Division does not object to a waiver of penalties, reasonable cause exists to waive all penalties at issue in this appeal.

Interest. Interest is assessed because the taxpayer has had use of money that should have previously been paid to the Tax Commission. The criteria to waive interest are more stringent than the criteria to waive penalties. In accordance with Rule 42(2), interest is waived only if a taxpayer shows that the Commission gave erroneous information or took inappropriate action that contributed to the error. As explained earlier, the error that occurred in this matter was made by parties other than the Tax Commission. Accordingly, reasonable cause does not exist to waive interest under Rule 42.

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Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the taxpayer owes $$$$$ of Utah income tax for the 2005 tax year, as shown on the return he filed and the Division accepted. The Commission waives all penalties at issue in this matter. The Commission, however, does not waive the interest that is due in this matter. 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

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.