

17-1842
TAX TYPE: INCOME TAX
TAX YEAR: 2010
DATE SIGNED: 12/12/2018
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS, Petitioners, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 17-1842 Account No. ##### Tax Type: Income Tax Tax Year: 2010 Judge: Marshall
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Presiding:

Michael Cragun, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, *Pro Se*
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Assistant Attorney General
REPRESENTATIVE FOR RESPONDENT-2, Taxpayer Services Division
REPRESENTATIVE FOR RESPONDENT-3, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 13, 2018, in accordance with Utah Code Ann. §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners (“Taxpayers”) are requesting a waiver of interest assessed on their individual income tax return for the 2010 tax year.
2. Respondent (“Division”) issued a Waiver Decision letter on October 23, 2017. The Division waived the assessed penalties, but denied the request for a waiver of interest of \$\$\$\$ through November 22, 2017.
3. As of the hearing date, the interest had been paid.
4. Taxpayers argued that the Tax Commission Publication 49 for the 2010 tax year was “erroneous.”

5. Taxpayers provided a list of synonyms for “erroneous.” He noted that the number one synonym was “mistaken.” The other synonyms on the list included: misleading, unsound, flawed, inaccurate, wrong, specious, invalid, and untrue. (Exhibit P-1).
6. TAXPAYER-1 stated that he relied on the following information from Publication 49 in determining that his wife was a nonresident of Utah:

A non-resident individual is one who was not domiciled in Utah or was in Utah for temporary purposes for less than 183 days during the taxable year or does not maintain a permanent place of abode in Utah. Income received by a non-resident from Utah sources is taxable in Utah.
7. TAXPAYER-1 argued that if an individual meets any one of the circumstances, then they are a non-resident. He determined that his wife was not in Utah for 183 days, and thus was a non-resident.
8. TAXPAYER-1 submitted opinion letters from English professors regarding the excerpt of Publication 49 that he relied upon.
9. NAME-1, a professor at UNIVERSITY-1, opined “[i]f you want to know whether the ‘or’ suggests nonresidential status is assumed if one of these three items is true, than I would say the answer is yes, if a person is in Utah for only 182 days they would be considered a nonresident of Utah. The person would be considered a nonresident because they meet one of the three criteria listed in the sentence.” (Exhibit P-2).
10. NAME-1 added, “[t]he use of a coordinating conjunction (“or”) and the parallel structure of the sentence suggest an equal status for the three phrases. In other words, each may stand alone as a qualification for nonresident status.” (Exhibit P-2).
11. NAME-1 also noted, “[i]f you want to know if a person who only spent 182 days in Utah but maintains a domicile in Utah would be considered a resident, then I would say you cannot make that distinction with this sentence alone. The sentence does not answer that question for the reader – it requires additional description to help negotiate contradictions.” (Exhibit P-2).
12. NAME-2, a professor at UNIVERSITY-2, wrote, “[i]f any of the three clauses describe a person, then that one has to be a non-resident.” (Exhibit P-3).
13. The definition of “Nonresident” is confusing when not read in context with the remaining definitions and instructions in Publication 49.
14. REPRESENTATIVE FOR RESPONDENT-2, a compliance agent with the Division testified that she was assigned the instant case once the Taxpayers filed an appeal of the October 23, 2017 Waiver Decision Letter.
15. REPRESENTATIVE FOR RESPONDENT-2 explained why the penalties waived by the Division were assessed. The Taxpayer was audited for the 2010 tax year, which he appealed in

Appeal No. 14-1198. The Commission issued its Findings of Fact, Conclusions of Law, and Final Decision on September 6, 2016. The Taxpayer requested reconsideration of that decision, and on January 26, 2017, the Commission issued an Order Denying Request for Reconsideration. The tax assessed under the audit was not paid until August 31, 2017, and so a late payment penalty was assessed. (Exhibits R-1 and R-2).

16. The Division argued that the Commission should dismiss the Taxpayers' appeal under the doctrine of claim preclusion.
17. The Division's representative noted that for a claim to be barred, three elements are required. First, it must be the same parties or their privies. Second, the claim must have been presented in the first action. Finally, the first action must have resulted in a final judgment on the merits.
18. The Division argued the parties to the actions are the same. Both actions involve the Taxpayers as petitioner and a division of the Utah State Tax Commission as Respondent.
19. In the Formal Hearing for Appeal No. 14-1198, the Taxpayers also requested a waiver of interest on the basis that the language in Publication 49 was misleading. The Commission concluded the following:

The Taxpayer argues the language provided in Publication 49 was misleading and not clear. He states that he had considered TAXPAYER-2 to be a nonresident based on the definition of nonresident provided in that publication. That definition stated, "a nonresident individual is one who was not domiciled in Utah or was in Utah for temporary purposes for less than 183 days during the taxable year or does not maintain a permanent place of abode in Utah. (Emphasis added). This definition provided three clauses each separated by the term "or" meaning, that if a taxpayer failed to meet any one of the clauses then they would not qualify as a nonresident. The first clause states that a nonresident was "one who is not domiciled in Utah." Domicile was also defined in that publication and would have made it clear that TAXPAYER-2 was, in fact, domiciled in Utah. The Tax Commission has authority to waive interest under Utah Code Subsection 59-1-401(14). Administrative Rule R861-1A-42 provides that 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. In this case, the instructions were reasonably clear and the Taxpayers did not follow them. Had TAXPAYER-2 actually qualified as a nonresident, they should have filed under "Special Instructions" which resulted in a higher tax liability than the way they had filed. The return they had filed excluded TAXPAYER-2's income from their joint federal adjusted gross income. There is no basis for a waiver of interest. No penalties were assessed with the audit.

(Exhibit R-1).

20. The Taxpayers requested reconsideration of the Commission's decision in Appeal No. 14-1198. In its Order Denying Request for Reconsideration, the Commission again addressed the Taxpayer's arguments regarding the language in Publication 49, as follows:

The Taxpayers had argued that the definition of "Nonresident" in Publication 49 was unclear. In his supplemental filing, he provided the information that he had asked a number of people to read the definition of "nonresident" and most found it to be "too confusing to understand what is meant." The Taxpayers have a point that the definition of "Nonresident" in Publication 49 may be unclear when considered separately from the other information provided in that publication. However, it needs to be read in context with the other information provided in Publication 49, which included the "general Information" and definitions of "resident" and "Domicile." When read in context with the other information provided in Publication 49, it is sufficiently clear and does not demonstrate Tax Commission error requisite for waiver of interest.

(Exhibit R-2).

21. The Commission takes administrative notice that Appeal No. 14-1198 was not appealed judicially.
22. The Division argued that in the event the Commission finds that claim preclusion is not applicable in this matter, that there is not reasonable cause to waive the interest.
23. The Division's representative stated that under Administrative Rule R861-1A-42(2), the Taxpayer must show that the Tax Commission gave the taxpayer erroneous information or took inappropriate action. The Division's representative sympathized with the Taxpayer, but argued it was not erroneous information on the part of the Tax Commission, but the Taxpayer's misunderstanding of the law that resulted in the error. He stated that while he understands the Taxpayer's confusion, if the entire publication was read in context, it was clear the Taxpayer's wife was domiciled in Utah.

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...”

CONCLUSIONS OF LAW

Taxpayers’ appeal should be dismissed, as it is barred by the doctrine of claim preclusion. The doctrine of claim preclusion prevents the relitigation of all issues that were, or could have been, litigated in a prior action. In order for the doctrine of claim preclusion to apply, three elements must be satisfied. “First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits.” *Macris & Assoc. v. Neways, Inc.*, 16 P.3d 1214, 1219 (Utah 2000).

Both Taxpayers and the Utah State Tax Commission were parties in Appeal No. 14-1198 as well as the instant case. The Commission notes that in Appeal No. 14-1198, the respondent was the Auditing

Division of the Utah State Tax Commission. In the instant case, the Respondent is the Taxpayer Services Division of the Utah State Tax Commission. Ultimately, the respondent in each case is the Utah State Tax Commission, though the Commission was represented by different divisions in each case. Thus, the Commission concludes the first element of claim preclusion has been met.

The Taxpayers raised the same issue in Appeal No. 14-1198. Both the instant case and Appeal No. 14-1198 involved the Taxpayers' individual income tax return for the 2010 tax year. In Appeal No. 14-1198 the Taxpayers presented their arguments that the interest should be waived because of the definition of "Nonresident" in Publication 49. The Commission considered the Taxpayers' arguments and found there was no basis for a waiver of interest both in the Findings of Fact, Conclusions of Law, and Final Order and the Order Denying Request for Reconsideration. The Taxpayer has raised the same arguments in this appeal. Thus, the second element of claim preclusion has been met.

Appeal No. 14-1198 was a "final judgment on the merits." The Commission issued its Findings of Fact, Conclusions of Law and Final Order for Appeal No. 14-1198 on September 6, 2016. The Taxpayers requested reconsideration of that order, and the Commission issued an Order Denying Request for Reconsideration on January 26, 2017. There is a notice at the end of the order explaining that under Utah Code Ann. §59-1-601 and 63G-4-401, there is a period of thirty days to request judicial review of that order. The Taxpayer did not request judicial review, and thus the Order Denying Request for Reconsideration constituted the final agency action. The Commission finds that the final agency action is a "final judgment on the merits," satisfying the third element of claim preclusion.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission dismisses the Taxpayer's appeal with regard to the request to waive interest for the 2010 tax year. The Commission sustains the Division's Waiver of penalties. It is so ordered.

DATED this _____ day of _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice of Appeal Rights and 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 assessed. You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.