

Appeal No. 18-1071

TAX TYPE: INCOME TAX

TAX YEAR: 2014

DATE SIGNED: 4/15/2020

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION	
TAXPAYER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER REGARDING TAX YEAR 2014 Appeal No. 18-1071 Account No. ##### Tax Type: Income Tax Tax Year: 2014 Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER

For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 6, 2020, for an Initial Hearing in regards to tax year 2014,¹ in accordance with Utah Code Ann. §59-1-502.5. Petitioner (“Taxpayer”) had appealed a Notice of Deficiency for tax year 2014, which had been issued by the Respondent (“Division”) on April 2, 2018. The notice stated the audit tax due was \$\$\$\$\$. In addition, the audit assessed penalties of \$\$\$\$\$ and interest of \$\$\$\$\$. At the hearing, the Taxpayer agreed with the tax amount, but requested waiver of the penalties and interest. The Division agreed to waive the penalties, explaining that these penalties had been automatically system generated as 10% failure to timely file and 10% failure to timely pay penalties, which should not have been

¹ This appeal was opened for tax years 2014 and 2015. Although the Taxpayer is still working with the IRS on establishing her federal adjusted gross income for tax year 2015, the only issue for tax year 2014 was whether or not penalties and interest should be waived. The 2014 tax year was scheduled for this hearing to resolve the issues for that year only.

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assessed because the Taxpayer had filed a return and paid the tax indicated on the return.² The sole issue remaining for the hearing was the Taxpayer's request for waiver of the interest.

APPLICABLE LAW

The Commission has been granted the discretion to waive penalties and interest. Utah Code §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:

- (1) 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.

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

DISCUSSION

The Taxpayer explained that she was a civilian employee of the Department of Defense who was on continuous military orders to work in FOREIGN COUNTRY in direct support of the U.S. Armed Forces. She was stationed in FOREIGN COUNTRY from July 1, 2016 through July 29, 2018. The Taxpayer had filed Utah and federal returns for tax year 2014 before her service began in FOREIGN COUNTRY. FOREIGN COUNTRY was designated as a combat zone throughout the time she was there. The Taxpayer provided a copy of a travel order from the Department of Defense, DD Form 1610, which was issued on October 28, 2016 and did indicate the number of days she would be in FOREIGN COUNTRY was 667. The Taxpayer stated that she had been working in FOREIGN COUNTRY since July 1, 2016. It was while she was in FOREIGN COUNTRY that the IRS had audited her 2014 federal individual income tax return and increased her federal tax liability. When in contact with the IRS via telephone from FOREIGN COUNTRY, an IRS employee explained to her about the Combat Zone Extension of Deadlines. She indicated

² In this case, the Taxpayer had timely filed a return and paid the tax indicated on the return. The Division explained they had to indicate the return as reversed on the system to change the Taxpayer to a full year resident status, which resulted in these penalties being assessed.

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the IRS did grant her the extension and waived penalties and interest for the period that she was serving in FOREIGN COUNTRY plus 180 days thereafter. She explained that the Utah Tax Commission's website states that Utah follows federal guidelines for this type of relief, providing a copy from the website incometax.utah.gov of the instructions under the tab for "Notifying the Tax Commission by E-Mail about Combat Zone Service." The instructions on the Tax Commission's website state, "Utah follows federal guidelines [for who] qualifies for this tax relief and for how long. See IRS publication 3 for information."

She provided some pages from the Internal Revenue Service's Publication 3 and question and answers on the IRS website regarding Combat Zone Service. These indicate that a member of the U.S. Armed Forces serving in a designated combat zone is entitled to an extension for filing and paying income taxes for the period while they are in the combat zone plus 180 days and that the individual serving in the combat zone would not be charged interest or penalties attributable to the extension period. The information also made it clear that the Combat Zone Service Extension applied "to individuals serving in the combat zone in support of the U.S. Armed Forces, such as merchant marines serving aboard vessels under the operation or control of the Department of Defense, Red Cross personnel, and civilian personnel acting under the direction of the U.S. Armed Forces in support of those forces."³ The Taxpayer was employed by the Department of Defense to work in FOREIGN COUNTRY in support of the U.S. Armed forces and the IRS had granted her the Combat Zone Service Extension.

At the hearing, the representative for the Auditing Division agreed to waive the interest based on the Combat Zone Service Extension for that period of time that the Taxpayer was working in FOREIGN COUNTRY plus the 180 days after. He points out that since the tax for tax year 2014 was due on April 15, 2015, there had been interest that had accrued from the due date of the return until the Taxpayer's employment in the combat zone began on July 1, 2016 and he also notes that the Taxpayer had not paid the audit within the 180 days after returning from the combat zone, so interest should also be charged starting after July 29, 2018 plus 180 days, until the deficiency is paid in full. However, he did agree to waive the interest for the period while the Taxpayer was in the combat zone plus 180 days. The Taxpayer did agree to this at the hearing and did not argue for further waiver.

³ Excerpt from <https://www.irs.gov/newsroom/extension-of-deadlines-combat-zone-service>, Q-16.

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From review of the information, the Taxpayer has supported that she was a civilian employee working under the direction of the U.S. Armed Forces in support of those forces in a combat zone and qualified for the relief based on federal guidelines. The Tax Commission may waive interest if reasonable cause is shown under Utah Code §59-1-401(14). Under Utah Admin. R861-1A-42(2), reasonable cause for the waiver of interest is limited to instances where the Tax Commission provided “erroneous information or took inappropriate action.” In this matter the Tax Commission has indicated on its website that Utah follows the federal guidelines for Combat Zone Service Extensions, so after receiving notice from the Taxpayer that she qualified for the extension, it would be an error to charge the Taxpayer the interest for the combat zone service period plus the 180 days. The interest for the period of the combat zone service plus 180 days should, therefore, be waived.

Jane Phan

Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission waives the portion of the interest that accrued on the Taxpayer’s 2014 Utah individual income tax audit deficiency for the period of time from July 1, 2016 through July 29, 2018 plus 180 days based on the Combat Zone Service Extension. In addition, the Tax Commission sustains the Division’s decision to waive the penalties for tax year 2014. The audit deficiency as it pertains to the tax amount for tax year 2014 is upheld. 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.

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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.