

18-1315
TAX TYPE: INCOME TAX
TAX YEAR: 2016
DATE SIGNED: 12/27/2018
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 18-1315</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2016</p> <p>Judge: Nielson-Larios</p>
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Presiding:
Aimee Nielson-Larios, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER, by telephone

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 6, 2018 for an Initial Hearing in accordance with Utah Code Ann. § 59-1-502.5.

Petitioner (“Taxpayer”) requested a waiver of penalties and interest from Respondent (“Division”) for the 2016 tax year. On June 15, 2018, the Division issued a Waiver Decision, in which the Division granted the Taxpayer’s request for a waiver of penalties and denied the Taxpayer’s request for a waiver of interest.

Although not reflected on the Waiver Decision, the Division wrote off interest of \$\$\$\$\$, which is the interest that accrued between April 18, 2017, and September 30, 2017.¹ The Division has not waived the interest of \$\$\$\$\$, which accrued between October 1, 2017, and June 13, 2018.

¹ The table in the Division’s Response to Petition for Redetermination describes the \$\$\$\$\$ amount as being “[w]rit[ten] off.”

The Taxpayer appealed the Division's Waiver Decision to the Commission. The Taxpayer now requests the Commission waive the interest of \$\$\$\$\$.²

The Taxpayer also incurred a lien fee of \$\$\$\$\$ and garnishment fees of \$\$\$\$\$.³ At the Initial Hearing, the Division stated that the Division does not have authority to waive lien fees and garnishment fees. The Division noted that lien fees and garnishment fees are not part of the Waiver Decision. The parties agreed that this Initial Hearing Order would only address the interest of \$\$\$\$\$. The Taxpayer explained that he appealed not because of the amount at issue; instead, he appealed so that the Tax Commission will make policy changes benefiting other taxpayers who experience a similar situation.

APPLICABLE LAW

Utah Code Ann. § 59-1-402 states the following in part:

(1)

(c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

(A) a tax, fee, or charge the commission administers under:

(I) this title;

. . . . or

(B) another amount that by statute is subject to interest imposed under this section.

. . . .

(6) Interest on any underpayment, deficiency, or delinquency of a tax, fee, or charge shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

. . . .

Utah Code Ann. § 59-1-1402 includes definitions for Title 59, Chapter 1, Part 14, and states the following in part:

(5) "Liability" means the following that a person is required to remit to the commission:

(a) a tax, fee, or charge;

(b) an addition to a tax, fee, or charge;

(c) an administrative cost;

(d) interest that accrues in accordance with Section 59-1-402; or

(e) a penalty that accrues in accordance with Section 59-1-401.

. . . .

(7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means:

(i) a tax, fee, or charge the commission administers under:

(A) this title;

. . . .; or

(ii) another amount that by statute is administered by the commission.

² During the Initial Hearing, the Taxpayer disputed the amounts of penalties and interest as reported by the Division. All disputed amounts were within \$2. This order uses the amounts as reported by the Division.

³ The lien fee and garnishment fees are "administrative costs." "Administrative cost" is defined in Utah Code Ann. § 59-1-1402(1).

....

Utah Code Ann. § 59-1-1408 addresses the assessment of liabilities, stating the following in part:

(1) Except as provided in Subsections (2) through (4), an assessment is made on the date a liability is posted to the records of the commission.

....

(4) In the case of interest under Section 59-1-402 that accrues to a tax, fee, or charge, an assessment is considered to have been made on the date the tax, fee, or charge is assessed.

....

Utah Code Ann. § 59-1-1411 states the following about notice and demand letters:

(1) The commission shall as soon as practicable mail notice and demand to a person who owes a liability that has been assessed but remains unpaid.

(2)

(a) The notice and demand required by Subsection (1) shall:

- (i) except as provided in Subsection (2)(b), state the amount of the liability;
- (ii) demand payment of the liability; and
- (iii) be mailed in accordance with Section 59-1-1404.

(b) For purposes of Subsection (2)(a)(i), the notice and demand shall:

- (i) state the amount of interest and penalties that have accrued as of the date of the notice and demand; and
- (ii) include a statement that interest and penalties may continue to accrue in accordance with Sections 59-1-401 and 59-1-402.

....

(4) Upon issuance of the notice and demand described in this section, a person that owes a liability shall pay the liability at the place and time stated in the notice and demand.

Utah Code Ann. § 59-1-1404 addresses the Tax Commission's mailing of notices and states the following in part:

(4) Subject to Subsection (5), if the commission is required to mail a notice to a person under this part, the commission shall mail the notice to the person at the person's last-known address as shown on the records of the commission.

(5) In the case of a joint return filed by a husband and wife under Chapter 10, Individual Income Tax Act, if the commission is notified in writing by either spouse that separate residences have been established, the commission shall mail a duplicate of the joint notice to each spouse at each spouse's last-known address.

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 Utah Administrative Code R861-1A-42(2) to provide additional guidance on the waiver of interest, as follows in pertinent part:

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 Ann. § 59-1-1417(1) provides, “In a proceeding before the commission, the burden of proof is on the petitioner [taxpayer]...”

DISCUSSION

The Taxpayer timely filed and paid his 2016 individual income taxes.

The Tax Commission received a \$\$\$\$\$ payment unrelated to the Taxpayer’s account and applied it to the Taxpayer’s account for the 2016 tax year. According to the Division’s exhibit, this payment was received on February 17, 2017. The Tax Commission issued the Taxpayer a refund of \$\$\$\$\$ on May 1, 2017. The check stub stated in part, “TAX REFUND INFORMATION[.] NOTICE TO RECIPIENT[.] This is your State Income Tax Refund for the Tax Year Ending 12-31-16.” The Taxpayer received and cashed the check. The Taxpayer did not know why the Tax Commission issued the refund and contacted his tax preparer. The tax preparer instructed the Taxpayer that “[n]ormally you would receive a letter explaining what kind of adjustment the State made on your tax return . . .” The tax preparer also instructed the Taxpayer to “just wait and see if something else arises because of this refund.” The Taxpayer did not contact the Tax Commission for an explanation of the refund. The Division asserted that the Taxpayer should have done so.

At the Initial Hearing, the Division explained that on or about April 15, 2017, the Processing Division received a payment with an incomplete account number.⁴ The Division explained the payment was made from a bank and did not have the taxpayer’s name on it. The Division explained that the Processing Division employee had to make a decision on where to apply the payment. The Division explained the Processing Division employee keyed in the incomplete account number and applied it to the Taxpayer’s account because the employee determined the Taxpayer’s account number was a close enough match to the incomplete account number. No one in the Processing Division contacted the Taxpayer to see if the payment was his.

Based on the testimony at the hearing, it is uncertain whether the Tax Commission had the Taxpayer’s correct phone number at the time of the payment. The Taxpayer’s phone number was not on his 2016 TC-40 return. The phone number of the Taxpayer’s tax preparer was on the Taxpayer’s 2016 TC-40 return. The Division explained that the Tax Commission does not contact tax preparers about taxpayers’ payments unless for some reason the tax preparers are responsible for the payments.

⁴ The April 15, 2017 date seems inconsistent with the Division’s exhibit showing the payment was received on February 17, 2017.

The Division explained that an unrelated taxpayer contacted the Tax Commission about the payment and the Tax Commission found and correctly applied that payment to the unrelated taxpayer's account.

The Division explained that on August 30, 2017, the Tax Commission sent a letter to the Taxpayer's last known address explaining to the Taxpayer that he needed to repay the \$\$\$\$ by September 30, 2017, to avoid incurring penalties and interest. The Division explained that the Taxpayer did not respond by September 30, 2017. The Division sent subsequent letters on September 15, 2017, and on November 15, 2017. The Taxpayer did not respond to those letters.

Neither party provided copies of these letters. These letters seem to be notice and demand letters, which are addressed by § 59-1-1411.

The Taxpayer was assessed a lien fee on or about November 15, 2017.

The Taxpayer explained that he did not receive any of these letters. The Division explained that the Tax Commission had not received the letters back as returned mail. The Taxpayer indicated that the address on the letters did not include "Unit 1." The Division explained that the Taxpayer's last known address on the records of the Tax Commission was based on his 2016 TC-40, on which the Taxpayer did not include "Unit 1."

The Taxpayer also explained that he stays in Idaho in the summer and has his mail forwarded there. He explained he was in Idaho when the September 15, 2017 letter was issued and was likely in Idaho when the November 15, 2017 letter was issued. He speculated that the U.S. Post Office could have incorrectly forwarded his mail.

On June 6, 2018, according to the Taxpayer, NAME-1, a Tax Compliance Agent, contacted the Taxpayer and left a voicemail. The Division explained that its records showed NAME-1 attempted to contact the Taxpayer on June 5, 2018.

The Taxpayer stated that he returned NAME-1's call and left NAME-1 messages on June 7, 2018. The Taxpayer stated that on June 11, 2018, NAME-1 returned the Taxpayer's call and they spoke about the unpaid amount. Consistent with this, the Division explained that its records showed NAME-1 and the Taxpayer spoke on June 11, 2018.

The Division further explained that NAME-1 had attempted to contact the Taxpayer on April 24, 2018, but that phone number had been disconnected. The Division explained that the Taxpayer had included a phone number on his check dated April 17, 2018. NAME-1 used this phone number on or about June 5, 2018, to call the Taxpayer.

The Taxpayer was assessed garnishment fees on June 7, 2018.

The Taxpayer explained that he sent his payment of \$\$\$\$ on June 11, 2018. The Division's records show his payment as received on June 14, 2018.

The Taxpayer explained that his bank account was garnished on Friday, June 22, 2018, and the funds were returned to his bank account on Monday, June 25, 2018.

The Taxpayer made his waiver request of the Division on or about the time of his June 2018 payment. The Division waived penalties based on the Taxpayer's good compliance history. The Division wrote off \$\$\$\$ of interest that accrued from April 18, 2017 through September 30, 2017.

The Division explained that the Division did not waive the remaining interest of \$\$\$\$ because the Taxpayer had use of the money from October 1, 2017, until the Taxpayer made his payment on June 14, 2018.

The Tax Commission correctly assessed the interest. On or about August 30, 2017, the Tax Commission reapplied the February 17, 2017 payment, removing it from the Taxpayer's account for the 2016 tax year and correctly applying it to the unrelated taxpayer's account. For purposes of § 59-1-402(6), this change by the Tax Commission created an "underpayment, deficiency, or delinquency of a tax, fee, or charge."⁵ The Tax Commission then correctly followed § 59-1-402(6), under which "[i]nterest on any underpayment, deficiency, or delinquency of a tax, fee, or charge shall be computed from the time the original return is due . . . to the date the payment is received." The Tax Commission correctly assessed the interest in accordance with § 59-1-1408(4), under which the assessment of interest "is considered to have been made on the date the tax, fee, or charge is assessed."

The Tax Commission correctly issued the letter dated August 30, 2017. This letter appears to have been a notice and demand letter, as described in § 59-1-1411. Under § 59-1-1411(1), the Tax Commission is required to mail a notice and demand letter to a taxpayer if that taxpayer has an unpaid liability.⁶ The Taxpayer had an unpaid liability after the Tax Commission reapplied the February 17, 2017 payment. Under § 59-1-1411(2)(a)(iii) and § 59-1-1404, the Tax Commission must mail the notice and demand letter "to the person at the person's last-known address as shown on the records of the commission." The Tax Commission mailed the August 30, 2017 letter to the Taxpayer's last-known address as shown on the records of the commission, with that address being the address the Taxpayer provided on his 2016 TC-40. Under § 59-1-1411(4), "[u]pon issuance of the notice and demand [letter], a person that owes a liability shall pay the liability at the place and time stated in the notice and demand." The August 30, 2017 letter instructed the Taxpayer to repay the \$\$\$\$ by September 30, 2017, to avoid incurring penalties and interest. The Taxpayer did not do so. Additionally, the Tax Commission correctly issued the letters dated September 15, 2017, and November 15, 2017. These letters also appear to have been notice and demand letters issued to the Taxpayer's last-known address. Yet, the Taxpayer

⁵ "Tax, fee, or charge" is defined in § 59-1-402(1)(c).

⁶ "Liability" is defined in § 59-1-1402(5).

still did not repay the \$\$\$\$ as instructed in these letters. Overall, the Taxpayer received multiple notices and sufficient time to return the \$\$\$\$; however, the Taxpayer failed to do so until June 14, 2018, months after the first August 30, 2017 notice.

In conclusion, the Taxpayer has not shown “reasonable cause” for a waiver of interest, as required by § 59-1-401(14).

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division’s Waiver Decision and denies the Taxpayer’s request for a waiver of interest for the 2016 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 _____, 2018.

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.