

19-2062

TAX TYPE: INCOME TAX

TAX YEAR: 2018

DATE SIGNED: 3/23/2021

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 19-2062 Account No. ##### Tax Type: Income Tax Tax Year: 2018 Judge: Marshall
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative
TAXPAYER-1, Taxpayer
TAXPAYER-2, Taxpayer
For Respondent: RESPONDENT-1, Taxpayer Services Division
RESPONDENT-2, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 16, 2020 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (“Taxpayer”) timely appealed the Respondent’s (“Division”) denial of a request to waive penalties assessed on the Taxpayer’s 2018 individual income tax return. Taxpayer was assessed an extension penalty totaling \$\$\$\$\$, a late payment penalty totaling \$\$\$\$\$, and interest of \$\$\$\$\$ through January 15, 2020. Interest continues to accrue on any unpaid balance.

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

The Taxpayer held a minority interest in a partnership that was involved in a transaction with COMPANY-1. There were two phases to the sale. In 2017, the transaction involved cash and stock, and in 2018 the transaction involved stock. The transaction involved the transfer of a building. The Taxpayer was told that the exchange of the building for stock would be tax-free,

and that his gains would not be as significant as they were. It was not until later that the Taxpayer learned that he did not qualify for the tax-free exchange of the building for stock because he did not have sufficient control of the partnership.

The Taxpayer stated that he was the “technical guy” in the partnership, and that his partners did not share all information with him. He stated that his partners had unrelated land deals that they lost money on in 2010 and were able to use those losses to offset some of the gains. TAXPAYER-2 stated that it has been extremely difficult to get information concerning the partnership. She stated that the same accountant who prepared the partnership return had been preparing the returns for the partners for about eight years. TAXPAYER-2 stated that they would not give information to her, because she was not one of the partners. The Taxpayer hired a new accountant for the 2018 tax year.

The Taxpayer stated that based on the information that they had available, they tried to estimate what their tax liability would be for the 2018 tax year and make a prepayment. The Taxpayer and his wife estimated a tax liability of \$\$\$\$\$; they had \$\$\$\$\$ of withholding tax credit, and made a \$\$\$\$\$ prepayment, which the Commission received April 30, 2019. In a letter dated January 2, 2020, the Taxpayer and his wife set forth the information they had available to them at the time they tried to estimate their 2018 tax liability. The Taxpayer and his wife identified the following sources and their calculation to determine the amount of prepayment:

W-2 Wages	\$\$\$\$\$
Interest and Dividends	\$\$\$\$\$
Business Income	\$\$\$\$\$
Capital Gain	\$\$\$\$\$
Total Income for Utah	\$\$\$\$\$
Estimated Tax (5%)	\$\$\$\$\$
W-2 Withholdings	(\$\$\$\$\$)
Prepayment Needed	\$\$\$\$\$

The Taxpayer’s representative stated that the Taxpayer received the K-1 in May, and filed the return. However, he stated that the Taxpayer was unable to pay the tax liability at that time. The Taxpayer’s representative stated that the Taxpayer had no way of generating income with the stock shares received in the transaction. The stock was restricted and could not be sold for a year, nor could the Taxpayer use it as collateral for a loan. The Taxpayer and his wife were in the process of building a home, and once construction was completed, they borrowed from the equity in the home to pay the tax liability.

The Division’s representative stated that any waiver request that is over \$\$\$\$\$\$ has to be approved by the Commission. She stated that the Commission denied the waiver request after not finding reasonable cause to waive the penalties. The Division’s representative noted that there are safe harbor provisions, set forth in Utah Code Ann. §59-10-516, that if followed, can prevent the

assessment of penalties for returns filed within the extension period. She noted that for 2017, the Taxpayer's liability was \$\$\$\$\$. The Division's representative stated that it appears that the issue was one of financial hardship, which is not considered reasonable cause for the waiver of penalties.

The Division's answer included an account history, which shows the Taxpayer was assessed both extension and late payment penalties on his and his wife's 2015 individual income tax filing. It does not show any penalties assessed in either 2016 or 2017.

The Taxpayer's representative stated that the late payment was not intentional, and that the Taxpayer was trying to follow the safe harbor provisions. He stated that the Taxpayer was led to believe that the building sale would not be taxable, and therefore the gain on the transaction would not be as significant. The Taxpayer's representative noted that the Taxpayer had no control over the transaction.

The Commission has promulgated Administrative Rule R861-1A-42 and Publication 17 to outline the circumstances the Commission may consider "reasonable cause" justifying a waiver of penalties. The Taxpayer argued that he did not have all of the information necessary to correctly estimate his 2018 tax liability. He attempted to estimate his 2018 liability, and sent in a prepayment. However, even if the prepayment would have been sufficient, it was not made by April 15, 2019. The Taxpayer did not remit payment when his tax return was filed because the stock received in the transaction was not a liquid asset. This appears to be more of a financial hardship issue, which is generally not considered reasonable cause for a waiver of penalties. In determining whether penalties can be waived based on a taxpayer's compliance history, the Commission considers a three-year look-back period. In this case, the Taxpayer and his wife were assessed an extension penalty and late payment penalty for the 2015 tax year. Thus, for purposes of a waiver of penalties, the Taxpayer is considered to have a poor compliance history. Under the circumstances, there is not reasonable cause to waive the penalties.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer's request for a waiver of penalties on the 2018 individual income tax return. 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.