

BEFORE THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA



FILED
GA. TAX TRIBUNAL

FEB 11 2015

F1 and F2,

Petitioners,

v.

LYNETTE T. RILEY, in her Official
Capacity as Revenue Commissioner for
the State of Georgia,

Respondent.

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Yvonne Bouras
Yvonne Bouras
Tax Tribunal Administrator

* TAX TRIBUNAL DOCKET
* NO.: TAX – IIT - 1345974

ORDER

2015-3 Ga. Tax Tribunal, February 11, 2015

In Petitioners' Motion for Relief from the Assessment of Penalties and Interest for Taxes Owed Prior to the Court's Decision in this Appeal ("Motion") dated December 30, 2014, and docketed on January 9, 2015,¹ Petitioners have asked this Tribunal to waive the income tax penalties and interest assessed against them by the Revenue Department for 2011 (the tax year at issue in this case) and for 2012 (the tax year at issue in Tax Tribunal Docket No. TAX – IIT - 1514773). For the tax year 2013, which is not currently the subject of any action before this Tribunal, Petitioners have asked the Tribunal to direct the Revenue Department not to assess them with any penalties or interest attributable to re-determining their liability for that year as Georgia residents.

¹ For the reasons noted in the original decision in this case, Petitioner F-1 and F-2, 2014-16 Ga. Tax Tribunal, December 10, 2014, the names of Petitioners and other identifying information have been redacted from the published version of this Order.

The Respondent has correctly pointed out several ways in which the Petitioners' Motion is procedurally defective. As we noted in Mark V. Banner and Tina L. Kelley, 2014 Ga. Tax Tribunal, June 11, 2014, however, where Petitioners appear *pro se*, as in this case, this Tribunal makes every reasonable allowance not to let procedural errors serve as a trap for the unwary. Although F-2 is admitted to the Bar, she is not a litigator, is certainly not a specialist in tax matters and is not familiar with procedures before the Tribunal. Moreover, there are some extenuating circumstances here as Petitioners did promptly contact Respondent's counsel when the decision was entered in this case on December 10, 2014, to discuss payment terms and their request for penalty and interest waiver. Due to personnel changes at the office of Respondent's counsel, it is not entirely clear what discussions ensued in response to this request. Accordingly, it appears that Petitioners did not understand that the appropriate step to take was to file a Motion for Reconsideration or Rehearing under Tribunal Rule 616-1-3-.25.

In light of these extenuating circumstances, we will therefore address the Petitioners' Motion on the merits as being in the nature of a Motion for Reconsideration.

First, Petitioners' only tax year before the Tribunal in this case and the only one as to which the matter has been resolved on the merits is tax year 2011. Therefore Petitioners' Motion, insofar as it requests this Tribunal to rule on any subsequent tax years as to any issues is **DENIED**.

Second, with respect to Petitioners' Motion as to the 2011 tax year, insofar as such Motion requests abatement of interest, it must be **DENIED**.

Under current law, Respondent has the discretion to "waive the collection of any interest, in whole or in part, due the state on any unpaid taxes whenever or to the extent that he reasonably determines that the delay in payment of the taxes was attributable to the action or

inaction of the department.” O.C.G.A. § 48-2-41. Note that under this statute, Respondent is not even *permitted* to waive interest except in those very narrow circumstances where the delay was attributable to “action or inaction” of the Revenue Department. There is absolutely nothing in the record in this case to indicate the Petitioners sought an interest waiver from the Commissioner prior to the Tribunal’s December 10, 2014 decision or, indeed, that there is any basis for waiver in this case. And this Tribunal could only sustain such a challenge to the Respondent’s decision not to waive interest under the extremely deferential “abuse of discretion” standard that would require that Respondent have acted arbitrarily and capriciously. John Doe I and John Doe II, 2013-1 Ga. Tax Tribunal, October 1, 2013. There is absolutely nothing in the record to suggest that such is the case here.

Third, and finally, insofar as the Petitioners’ Motion seeks waiver of the underpayment penalty under O.C.G.A. § 48-7-86(a)(2), Petitioners’ Motion is **GRANTED**.

Under O.C.G.A. § 48-7-86(a)(2) “No [underpayment] penalty shall be assessed pursuant to this subsection . . . when it is shown that the failure [to pay the appropriate tax] is due to reasonable cause and not due to willful neglect.” For these purposes the Tribunal looks to how “reasonable cause” is established under federal law if a taxpayer wishes to avoid the penalty imposed by I.R.C. § 6662 on income tax underpayments. See generally Treas. Reg. § 1.6664-4(a) (“No penalty may be imposed under section 6662 with respect to any portion of an underpayment upon a showing by the taxpayer that there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion.”)

Under I.R.C. § 6662, a “[‘reasonable cause’] determination . . . is made on a case-by-case basis, taking into account all pertinent facts and circumstances.” Treas. Reg. § 1.6664-4(b). “Generally, *the most important factor is the extent of the taxpayer’s effort to assess the*

taxpayer's proper tax liability. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of all the facts and circumstances, including the experience, knowledge, and education of the taxpayer.” Id. (emphasis added).

The Petitioners argue that their “reasonable cause” includes the fact that “Georgia’s tax law statutes do not expressly define the terms legal resident or domicile to include those living overseas in [the Petitioners’] circumstances.” And at the hearing on the motion in this matter, F-2 stated that she had attempted to ascertain Petitioners’ status from the applicable statutory language and from reviewing the directions in Respondent’s forms. Based upon this, it appeared to her that filing as a non-resident was the correct manner in which to proceed. She also noted that she could not find any published decisions in Georgia that address the issue for tax purposes. The Petitioners’ good faith belief in the merits of their position is supported by their forceful advocacy of their position and their determination in pursuing this case.

Respondent urges that Petitioners should be held to a higher standard in deciding whether “reasonable cause” existed because F-2 is a licensed attorney. See Saunders v. Commissioner, 2002 Tax Ct. Memo LEXIS 148, *15 (June 10, 2002); Hodges v. Commissioner, 1993 Tax Ct. Memo LEXIS 317, *12-13 (July 19, 1993); Hall v. Commissioner, 1990 Tax Ct. Memo LEXIS 127, *82-83 (March 12, 1990) (where the Court found the taxpayer did not have “reasonable cause” for a claimed deduction, noting that “Petitioner was a lawyer and either knew or reasonably should have known that when taking a sizable charitable deduction, prudence requires verification and documentation of value.”) Although Respondent is quite correct that F-2 is an attorney, it is also true that she is neither a litigator nor a tax specialist. And while it is true F-2 as an attorney should appreciate when she might be entangled in a legal matter beyond

her own area of legal expertise, and indeed of the dangers of representing oneself generally, it is also true that given the cost, hiring an appropriate expert attorney in the context of the amounts in controversy in this matter is a difficult decision to justify. Although Respondent is also correct that there was significant case-law in Georgia as to the meanings of “legal residence” and “domicile,” the fact of the matter is the Tribunal’s opinion in this case is the first reported decision in Georgia to apply this non-tax case law to an income tax dispute.

Petitioners’ failure to pay the tax in this case was thus due to reasonable cause and not due to willful neglect. The penalty for underpayment is therefore waived.

CONCLUSION

Accordingly, Petitioners’ Motion for Relief from the Assessment of Penalties and Interest for Taxes Owed Prior to the Court’s Decision in This Appeal is:

DENIED as to all of Petitioners’ tax years other than 2011;

DENIED insofar as it requests waiver of interest for Petitioners’ tax year 2011; and

GRANTED insofar as it requests waiver of the underpayment penalty for tax year 2011.

SO ORDERED, 11th day of February, 2015.

/s/ Charles R. Beaudrot, Jr.
CHARLES R. BEAUDROT, JR.
JUDGE, *PRO TEMPORE*
GEORGIA TAX TRIBUNAL