

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF

KEVIN A. LEIN & AMY L. LEIN
315 ½ Main Avenue, Apartment C
Brookings, South Dakota 57006

v.

IOWA DEPARTMENT OF REVENUE

INDIVIDUAL INCOME TAX APPEAL
REINSTATEMENT

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**DIRECTOR'S FINAL ORDER ON
REVIEW**

REV. DOCKET NO.: 2022-200-2-0141
DIA DOCKET NO.: 22IDRIIT0012

PROCEDURAL POSTURE

Joseph Ferrentino, an Administrative Law Judge (“ALJ”) at the Iowa Department of Inspections and Appeals, issued a Proposed Decision (Statement of the Case, Findings of Fact, Conclusions of Law and Analysis, and Order) in the above-captioned matter on July 20, 2022. In his Proposed Decision, the ALJ upheld the Department’s decision to deny Kevin and Amy Lein’s (“Taxpayers”) Application for Reinstatement of their tax appeal. Proposed Decision, 4. Taxpayers filed an appeal of the ALJ’s Proposed Decision on August 2, 2022. The Director of the Department of Revenue (“Director”) granted Taxpayer’s appeal and sent the parties a Notice of Time and Place of Hearing on October 25, 2022.

A hearing before the Director was held on December 9, 2022. The Iowa Department of Revenue (“Department”) was represented by Assistant Attorney General Andrew Jensen. Kevin Lein appeared on behalf of Taxpayers. Also attending at the hearing were Nick Bemberg and Zachary Waldmeier, attorneys for the Director. Three additional Department staff—Amanda Davis, Mitzi Pavey, and Sharon Turner—were present as observers.

As mentioned above, the ALJ affirmed the Department's decision to deny Taxpayer's Application for Reinstatement. Having evaluated the record developed in this matter, the ALJ's Proposed Decision, and the arguments presented at the hearing, the Director issues this Order.

FINDINGS OF FACT

The Director hereby adopts and incorporates into this decision the Findings of Fact made by the ALJ, except to the extent modified or expanded below.

The Director takes special notice of the following facts presented in the record. As noted by the ALJ, during the late summer of 2021, Taxpayers and the Department exchanged a number of communications related to certain federal audit information that indicated Taxpayers' owed additional Iowa income tax. Proposed Decision, 1; Exs. A-C. Throughout this correspondence, Taxpayers responded to the Department's letters with relative promptness. See Exs. A-B. For instance, when Taxpayers received a Department communication on August 2, 2021, Taxpayers quickly wrote and mailed a response thereafter. Ex. A. Similarly, upon receipt of the Department's letter dated August 27, 2021, which informed Taxpayers that adjustments were being made, a response was returned to the Department shortly thereafter. Ex. B. Additionally, in each response, Taxpayers reiterate their belief that the Department's determination regarding the adjustments was incorrect. Exs. A-B.

This pattern of relative promptness when responding to the Department's communications continued once Taxpayers received a billing, dated January 14, 2022. Ex. D. Taxpayers mailed a response, post-marked on January 26, 2022, which included a copy of the original appeal that the Department never received. *Id.* After being told the appeal was considered untimely, Taxpayers applied with haste to have the appeal reinstated. Ex. E. Taxpayers continued to respond swiftly to the Department's requests for additional information

to evaluate their Application for Reinstatement and to request a hearing on the matter once the Application was denied. Exs. G-J. Taxpayers' rapidity in communicating with the Department is also evidenced by the e-mails exchanged with Department staff in preparation for the hearing before the ALJ. Ex. F. Again, in the course of these communications, Taxpayers reiterated clearly and consistently that they disagreed with the Department's adjustments, that they sought to appeal the Department's determinations, and that they had mailed the original appeal at the beginning of November 2021. *See* Exs. D-F, H, J.

Additionally, of note is the Taxpayers' consistent and detailed description of the process by which the Taxpayers' November 1 appeal was mailed. *See* Exs. D-F, H; Director's Hearing Oral Argument Recording at 2:45-3:45, *Lein v. Iowa Dep't of Revenue*, Rev. Docket No. 2022-200-2-0141 (Dec. 9, 2022). Further, after learning that Department did not receive their timely-filed appeal, Taxpayers contacted the United States Postal Service multiple times to try to determine the whereabouts of the November 1 appeal. Exs. F, H, J. Having no success at tracking the misplaced appeal, Taxpayers sought the help of one of Mr. Lein's co-workers—a technology supervisor at Mr. Lein's place of employment—to substantiate the creation of Taxpayers' original appeal. Taxpayer's Ex. p. 5.

CONCLUSIONS OF LAW

A. Reinstatement of Untimely Filed Tax Appeals under the Iowa Code and Administrative Rules

Taxpayers who disagree with the Department's assessment of tax, interest, or penalty may appeal to the Director within sixty days after receiving a notice of assessment from the Department. Iowa Code § 422.28. The Iowa Administrative Code elaborates on this deadline stating that appeals not filed by the deadline "shall be dismissed by the [D]irector or the

[D]epartment employee designated by the [D]irector.” Iowa Admin. Code r. 701—7.12(1) (Dec. 14, 2022). Recognizing that certain failures by the Department could lead to a dismissal that would be unfair to taxpayers, the Department allows appeals dismissed as untimely to be reinstated in certain enumerated circumstances. *See id.* 701—7.12(1) “a”. Specifically, the rule allows for reinstatement of an untimely appeal when the Department fails to properly mail or personally deliver the notice of assessment, refund denial, or other notice of department action, or if the Department fails to provide an adequate explanation for the assessment or refund denial. Iowa Code § 421.60(2); Iowa Admin. Code r. 701—7.12(1) “a”. These errors did not occur in the present matter.

However, the current version of this rule was recently amended by the Department and became effective on November 10, 2021. 44 Iowa Admin. Bulletin 1025 (filed Sept. 9, 2021) (codified at Iowa Administrative Code r. 701—7.12). The rule in effect prior to November 10, 2021 provided a different standard for when untimely filed appeals could be reinstated. *See* Iowa Admin. Code r. 701—7.11 (Sep. 22, 2021). The former rule allowed appeals to be reinstated “for good cause as interpreted by the Iowa supreme court in the case of *Purethane, Inc. v. Iowa State Board of Tax Review*, 498 N.W. 2d 706 (Iowa 1993),” as long as the application for reinstatement is filed within 30 days of the date the appeal was dismissed. *Id.* 701—7.11(2) “c” (Sep. 22, 2021).

The Department applied the current rule in effect when the Department rejected Taxpayers’ appeal on January 26, 2022, when it denied Taxpayers’ Application for Reinstatement. Ex. E. In his proposed decision, the ALJ also applied the current iteration of the rule in upholding the Department’s denial of Taxpayers’ Application for Reinstatement. Proposed Decision, 3-4 The Director finds that both the Department and the ALJ applied the

wrong rule to Taxpayers' Application for Reinstatement. The Department should have applied the rule in effect on September 22, 2021 when the Department issued Taxpayers' Notice of Assessment. Taxpayers began the appeal process when they received the Notice of Assessment. To change the rules related to appeals Taxpayers must abide by during the appeal process would be unfair to Taxpayers. Thus, the Director must analyze Taxpayers' Application for Reinstatement under the "good cause" standard in effect on September 22, 2022.

B. Taxpayer's Appeal Should be Reinstated for Good Cause

In *Purethane*, the Iowa Supreme Court was tasked with determining whether a taxpayer had established "good cause" to have an untimely filed appeal reinstated. *Purethane, Inc. v. Iowa State Bd. of Tax Review*, 498 N.W.2d 706, 707–08 (Iowa 1993). In its analysis, the court explained that "good cause" can be "shown based on 'mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.'" *Purethane, Inc. v. Iowa State Bd. of Tax Review*, 498 N.W.2d 706, 707–08 (Iowa 1993) (citing *Whitehorn v. Lovik*, 398 N.W.2d 851, 853 (Iowa 1987); *Paige v. Chariton*, 252 N.W.2d 433, 437 (Iowa 1977)). However, the reason offered must be "a sound, effective, truthful reason, something more than an excuse, a plea, an apology, an extenuation or some justification for the resulting effect." *Id.* "Good cause" is not shown when the failure of the party seeking reinstatement is "the result of negligence, want of ordinary care or attention, or due to carelessness or inattention." *Id.* Similarly "good cause" is not present when a party's failure arises due to "mistakes or errors of judgment growing out of [a] misunderstanding of the law or the failure of the parties . . . through mistake to avail themselves of remedies[.]" *Purethane, Inc. v. Iowa State Bd. of Tax Review*, 498 N.W.2d 706, 711 (Iowa 1993) (citing *Claeys v. Moldeshardt*, 148 N.W.2d 479, 483 (Iowa 1967)). Significantly, the court stated unequivocally

that “[d]efaults which result from the negligence or carelessness of [a party] will not be set aside, for the law rewards the diligent and not the careless.” *Id.*

In this matter, Taxpayers have shown that good cause exists to reinstate their appeal as they have demonstrated to the Director’s satisfaction that they timely mailed their appeal to the Department and it was not received by the Department due to a mistake not attributable to Taxpayers. Throughout the process, Taxpayers diligently responded to all of the Department’s correspondences, maintaining their objections to the Department’s decision to assess them tax. Proposed Decision, 1; Exs. A-E. At no point other than the mistake at issue have the Taxpayers been negligent in their correspondence with the Department since they were notified by the Department of their findings. *Id.* It is illogical to think that, after being assessed and billed, Taxpayers would then cease their objections. In fact, after receiving a bill in January, Taxpayers again promptly responded to the Department. Ex. D. Additionally, after being notified that their appeal dated November 1, 2021 never arrived, Taxpayers reached out numerous times to the United States Postal Service to find their letter. Exs. F, H, J.

To substantiate their claim that they mailed the appeal on or about November 1, 2021, Taxpayers provide a letter from the technology supervisor at Mr. Lein’s place of employment stating that a document was created on October 30, 2021 on Mr. Lein’s work computer with text consistent with the appeal included in Taxpayers’ letter responding to the Department’s billing. Taxpayer’s Ex. p. 5. Further, Taxpayers were able to recall in great detail, the steps they took to mail the appeal. *See* Exs. D-F, H; Director’s Hearing Oral Argument Recording at 2:45-3:45, *Lein v. Iowa Dep’t of Revenue*, Rev. Docket No. 2022-200-2-0141 (Dec. 9, 2022). The detail provided by Taxpayers, along with their corroborating evidence and history of dealings with the Department, shows that the Taxpayers offered an honest, truthful reason for the mistake that

occurred through no fault of their own. For these reasons, the Director believes there is good cause to reinstate Taxpayer's appeal.

ORDER

IT IS THEREFORE ORDERED that, for the reasons articulated above, the Department's denial of Taxpayer's Application for Reinstatement of Appeal is REVERSED.

Done at Des Moines, Iowa on this 28 day of December, 2022.

IOWA DEPARTMENT OF REVENUE

By  _____

Kraig Paulsen, Director

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

IN THE MATTER OF:

Kevin A. Lein & Amy L. Lein
315 ½ Main Ave., Apt. C
Brookings, SD 57006

DIA No. 22IDRIIT0012
IDR Docket No. 2022-200-2-0141

PROPOSED DECISION

Individual Income Tax Protest.

STATEMENT OF THE CASE

Kevin and Amy Lein filed an appeal of a decision of the Department of Revenue (the Department) denying their request for reinstatement of an appeal. This matter came on for hearing by telephone on July 19, 2022. Assistant Attorney General Paxton Williams represented the Department. Also present on behalf of the Department was tax appeals specialist Malia Kirkpatrick. Kevin Lein represented the taxpayers. Official notice was taken of the administrative file. The Department submitted exhibits marked A-J that were admitted into the record. The appellants submitted fourteen pages of exhibits, which were also admitted.

FINDINGS OF FACT

In August and September 2021, the Department and Kevin Lein corresponded with each other about a federal tax audit. (Exs. A-C). On September 22, the Department issued a Notice of Assessment. (Ex. C). The Notice of Assessment states it is for the tax period ending December 31, 2018, and that it assesses \$12,769 in tax, \$272.20 in penalty, and \$2062.94 in interest, for a total of \$15,104.14 owed. (Ex. C). The Notice of Assessment states this was due to “federal audit.” (Ex. C). The Notice of Assessment provides that any protests thereof must be filed in writing within 60 days. (Ex. C). In this case, that meant a deadline for protest in late November.

The Department did not receive a protest by late November. In early February 2022, the Department received a letter from Kevin Lein that began, “I have submitted (11/1/21) my appeal and have yet to receive any response.” (Ex. D). Enclosed with *that* letter was another letter, dated November 1, 2021, regarding “Appeal as per Chapter 7 within the 60 day time frame (Letter received September 22, 2021).” (Ex. D).

Shortly thereafter, the Leins filed an application for reinstatement. (Ex. E). In support of their application, they wrote:

No less than four letters of correspondence were sent to the Department of Revenue from August 2022(10 days after the initial letter from the Department) including a complete evidentiary and supporting appeal on November 1. We were notified in February that none of those appeals was received. At this time: the Department of Revenue indicates receiving no such correspondence. These corresponding letters have been sent repeatedly to your legal representatives. They are attached again.

(Ex. E).

As the application indicates, the Department had informed the Leins that it had not received their November 1 letter. Kirkpatrick conducted an investigation in the Department's appeals section around this time and was unable to find any record of the letter. Kirkpatrick also spoke to the tax examiner handling the audit of the Leins'; that examiner also had no record of receiving the letter. (Kirkpatrick testimony). In late March, Kirkpatrick wrote the Leins a letter asking for "[t]he address to which your November 1, 2021 letter was mailed" and "[p]roof of mailing of your November 1, 2021 letter to the Department." (Ex. G).

Kevin Lein provided the address to which the November 1 letter was mailed. (Ex. H). The address was associated with a different section of the Department. Kirkpatrick investigated further and learned that that section, likewise, had no record of receiving the letter. (Kirkpatrick testimony).

Kevin Lein also submitted a request to the United States Postal Service to try to locate proof of mailing the November 1 letter. (Ex. H). The USPS eventually reported, in June 2022, that "after thoroughly searching for your mail we were unable to locate your missing item(s)." (App. Ex. p. 14). Throughout this appeal, Kevin Leid has remained adamant that he deposited the letter in a mailbox on or about November 1 and that it must have gotten lost in the mail. (Lein testimony; Exs. E, F, H, J; App. Ex. p. 3).

In April 2022, the Department denied the application for reinstatement:

In accordance with Iowa Administrative Code rules 701-7.8 (2020), appeals must be submitted to the Department either by electronic means, personally delivered to the Hoover State Office Building, or by mailing to the Iowa Department of Revenue at PO Box 14457, Des Moines, IA 50306. As the November 1, 2021 [letter] was not addressed to the correct mailing address, the appeal was not received by the Hearing Section and cannot be considered a timely appeal. Additionally, there is no evidence that the November 1, 2021 letter was received by any area of the Iowa Department of Revenue, including the examiner who worked your audit, or the accounting area that utilizes the 10471 PO Box. The Appeals Section requested

proof of mailing for the November 1, 2022 letter, but none was provided. The first appeal received by the Hearing Section was filed on January 26, 2022 and was outside the 60-day appeal period.

(Ex. I). The Leins filed a timely appeal. (Ex. J).

CONCLUSIONS OF LAW AND ANALYSIS

Appeals of Department decisions may be filed in one of four ways: submitting through GovConnectIowa, emailing idrhearings@iowa.gov, mailing the Legal Services and Appeals Division at P.O. Box 14457 in Des Moines, or hand delivering the appeal at the Hoover State Office Building. Iowa Admin. Code r. 701-7.3(1). Notably, however, failure to follow this rule is not listed as a ground for dismissal of an appeal. See Iowa Admin. Code r. 701-7.12.

Instead, Iowa Administrative Code rule 701-7.12 sets out the following grounds for dismissal: filing untimely, failing to follow the required format, failing to pursue the appeal at the informal stage, failing to respond to a denial of an application for reinstatement, failing to file a timely application for reinstatement, failing to diligently pursue the appeal during contested case proceedings, and refusing to comply with discovery requests. Iowa Admin. Code r. 701-7.12(1)-(6). The lone ground relevant to this appeal is the first: filing untimely.

When dealing with an appeal dismissed as untimely, the grounds for reinstatement are limited to the following:

(1) The department fails to do at least one of the following:

1. Mail the notice of assessment, refund denial, or other notice of department action as required by Iowa Code section 421.60(2)“c”(1) through 421.60(2)“c”(3); or
2. Personally deliver such notice as required by Iowa Code section 421.60(2)“c”(1) through 421.60(2)“c”(3).

For purposes of this rule, “last-known address” and “personal delivery” mean the same as described in rule 701-7.33(421).

(2) If the department fails to comply with the requirements of Iowa Code section 421.60(2)“b.”

Iowa Admin. Code r. 701-7.12(1). In other words, to grant reinstatement of the appeal, the tribunal must find either (a) that the Department failed to mail or personally deliver the notice of assessment, or (b) that the Department failed to comply with the requirements of Iowa Code section 421.60(2)(b).

Here, the Department did mail the notice of assessment. The Department has produced proof of the notice of assessment. The Leins’ argument, in fact, is that they received the notice of

assessment and responded to it timely. In short, it is undisputed that the Department properly mailed the notice of assessment.

That leaves compliance with Iowa Code section 421.60(2)(b), which provides:

b. The department shall furnish to the taxpayer, before or at the time of issuing a notice of assessment or denial of a refund claim, an explanation of the reasons for the assessment or refund denial. An inadequate explanation shall not invalidate the notice. For purposes of this section, an explanation by the department shall be sufficient where the amount of tax, interest, and penalty is stated together with an attachment setting forth the computation of the tax by the department.

The tribunal finds that the notice of assessment here satisfies those conditions. The notice has the amount of tax, interest, and penalty stated. The computation was the result of federal audit. The notice sufficiently explains its reasoning.

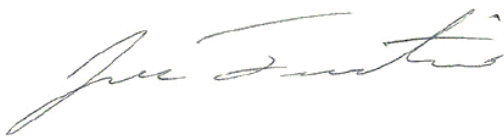
Therefore, neither ground for reinstatement is satisfied. As a result, the Department's decision to deny the application for reinstatement is affirmed.

As discussed at hearing, the Leins may still contest the assessment by paying the tax, interest, and penalty, and filing a timely refund claim. See Iowa Code § 421.60(2)(h).

ORDER

The Department's action is hereby AFFIRMED. The Department shall take any action necessary to implement this decision.

Dated this July 20, 2022.

A handwritten signature in cursive script, appearing to read "Joe Ferrentino", written in dark ink.

Joseph Ferrentino
Administrative Law Judge

cc: Kevin A. Lein and Amy L. Lein (By Mail)
Malia Kirkpatrick, IDR (By AEDMS)
Paxton Williams, Assistant Attorney General (By AEDMS)
Connie Larson (By AEDMS)

NOTICE

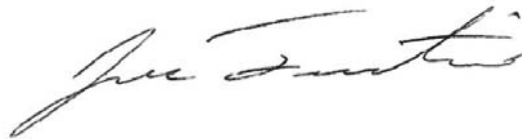
Pursuant to 701 Iowa Administrative Code 7.17(8)(d), this order becomes the final order of the Department for purposes of judicial review or rehearing unless a party files an appeal to or review

on motion of the director with 30 days of the date of this order, including Saturdays, Sundays and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. The appeal shall be directed to:

Office of the Director
Iowa Department of Revenue
Hoover State Office Building
Des Moines, Iowa 50319

Case Title: IN THE MATTER OF KEVIN A LEIN & AMY L LEIN
Case Number: 22IDRIIT0012
Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Joe Ferrentino", written in a cursive style.

Joseph Ferrentino, Administrative Law Judge