

09-1389
AUDIT
TAX YEAR: 2005
SIGNED: 09-10-09
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER	ORDER DENYING MOTION TO DISMISS
Petitioners,	Appeal No. 09-1389
v.	Account No. #####
AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,	Tax Type: Income Tax
Respondent.	Tax Year: 2005
	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP

For Respondent: RESPONDENT REP, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Hearing on Motion to Dismiss on August 3, 2009. Respondent's (the "Division's") Motion to Dismiss, dated May 19, 2009, ("Motion") was based on the contention that Petitioner (the "Taxpayer") had failed to timely file an appeal of the audit deficiency for the tax year 2005.

APPLICABLE LAW

Except in any case where the taxpayer has earlier filed with the commission a Petition for Redetermination of the deficiency as provided in Title 59, Chapter 1, Part 5, the notice of deficiency shall constitute a final assessment of the deficiency in tax, including interest thereon and any penalties or other additions to tax: (a) upon the expiration of 30 days, or 90 days if the notice is addressed to a person outside of the states of the union and the District of Columbia, after the date of mailing of the notice of deficiency to the taxpayer. . . (Utah Code Sec. 59-10-525.(1).)

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A taxpayer may file a request for agency action, petitioning the commission for redetermination of a deficiency. (Utah Code Sec. 59-1-501.)

A petition for redetermination is deemed to be timely if: 1) the petition is received in the Tax commission offices on or before the close of business of the last day of the time frame provided by statute; or 2) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute. (Utah Admin. Rule R861-1A-20(2).)

DISCUSSION

The representative for the Division points out that the Statutory Notice of Audit Change was issued on February 5, 2009. The Taxpayer's appeal was not submitted in this matter until April 6, 2009. The Division's representative pointed out that pursuant to Utah Code Sec. 59-10-525 an audit deficiency becomes the final assessment unless an appeal is filed within thirty-days from the date of the Notice of Deficiency.

When she had filed the appeal, the Taxpayer explained that reason it was late as follows:

Appeal is late because I have been mobilized with the Army Reserve (X) and have been traveling. Did not receive tax notice until past due date of appeal.

At the hearing, the Taxpayer was not present and her representative explained that she had been mobilized out of the country, and was in COUNTRY 1 or COUNTRY 2. He was unsure exactly of the date of the mobilization and indicated that he would send in documentation of the dates of mobilization after the hearing. The Taxpayer's representative did not send in this additional information.

The representative for the Taxpayer did not point to any specific provisions of Soldiers and Sailors Civil Relief Act or the Utah Service Member's Civil Relief Act that would apply to extend the deadline in this situation for filing an appeal and the representative for the Division was unaware of any provisions that might extend the deadline for military personnel on active duty in combat zones. The representative for the Division stated that the Division could consider additional information outside of the appeal process.

Upon review of the provisions applicable to members of the armed service, if they are deployed in a combat zone, deadlines for filing appeals are extended until 180 days after the taxpayer has left the zone. In this matter we do have the Taxpayer's representation that she had been deployed prior to filing the appeal and her representative testified that she was in active duty in COUNTRY 1 or COUNTRY 2. Based on this the appeal was within the extended deadline for those serving in the combat zone. Further, the appeal process could be stayed until after she has left the combat zone if the Taxpayer would prefer to wait until she can attend to it in Utah.

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ORDER

Based upon the foregoing, the Commission denies the Motion to Dismiss. The Taxpayer's appeal will proceed through the administrative process. The appeal would be stayed until after the Taxpayer has left the combat zone, should she so make that request. It is so ordered.

DATED this _____ day of _____, 2009.

Jane Phan
Administrative Law Judge

BY ORDER OF THE COMMISSION.

DATED this _____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice and Appeal Rights: Failure to pay the balance due as a result of this order within thirty days may result in an additional late payment penalty. You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission pursuant to Utah Code Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.

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