

12-1821
TAX TYPE: INCOME TAX
TAX YEAR: 2005
DATE SIGNED: 10-3-2012
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: B. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	ORDER ON RESPONDENT’S MOTION TO DISMISS Appeal No. 12-1821 Account No. ##### and ##### Tax Type: Income Tax Tax Year: 2005 Judge: Nielson-Larios
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Presiding:
Aimee Nielson-Larios, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer, in person
For Respondent: RESPONDENT, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 25, 2012 for a Hearing on Respondent’s (“Division”) Motion to Dismiss. The Division based its Motion to Dismiss on the contention that Petitioner’s (“Taxpayer(s)”) Petition for Redetermination was not timely filed.

APPLICABLE LAW

Utah Code Ann. § 59-1-501 provides that a taxpayer must file a petition for a redetermination of a deficiency within thirty days of the issuance of a notice of deficiency, as follows in pertinent part:

- (2) A person may file a request for agency action, petitioning the commission for redetermination of a deficiency.
- (3) Subject to Subsections (4) through (6), a person shall file the request for agency action described in Subsection (2):
 - (a) within a 30-day period after the date **the commission mails a notice of deficiency to the person in accordance with Section 59-1-1405...**

(Emphasis added.)

Utah Code Ann. § 59-1-1405(1) states:

Except as provided in Subsection (3) or (5), **the commission shall mail a notice of deficiency to a person in accordance with Section 59-1-1404** if the commission finds there is:

- (a) a deficiency in a tax, fee, or charge imposed; or
- (b) an increase or decrease in a deficiency.

(Emphasis added.)

Utah Code Ann. § 59-1-1404(4)-(5) states:

- (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.**

(Emphasis added.)

DISCUSSION

On May 4, 2012, the Division issued a Notice of Deficiency (“Notice”) with a non-filing audit estimate for the 2005 tax year to:

TAXPAYER-2 AND TAXPAYER-1
ADDRESS-1
CITY-1 UT ZIP CODE

At the hearing, TAXPAYER-1 (“TAXPAYER-1”), contended the Notice was sent to the wrong address. She explained that her ex-husband received the Notice and did not give it to her until June 3, 2012, which is the deadline printed on the Notice. This situation caused her to file after the deadline when she mailed her appeal, on Tuesday June 5, 2012 according to the postmark.

The Division said it used the address of the last-filed joint return of the Taxpayers. The Division also explained that its system pulled the joint address because the federal return was filed as joint. The Division also stated that its system did not identify a separate address for TAXPAYER-1. In response, however, TAXPAYER-1 stated that the last-filed joint return would have been from 2003 or 2004. She indicates she divorced three years ago, and that she has resided at her current address of ADDRESS-2, CITY-2, UT ZIPCODE for two years. She states she filed her 2010 and 2011 returns using her current address. The Division did not dispute these facts.

In this case, TAXPAYER-1 has shown that the Tax Commission did not mail the Notice to TAXPAYER-1 last known address, as required by § 59-1-1404(4). It was undisputed that the Tax Commission had TAXPAYER-1 2010 and 2011 returns on which she used the address of ADDRESS-2, CITY-2, UT ZIP CODE. Notwithstanding these returns, the Tax Commission mailed the Notice to TAXPAYER-1 at an address she used earlier for her 2003 or 2004 return that she and former husband filed as joint.

Because the Notice was not mailed to TAXPAYER-1 last known address, the Division has not shown that TAXPAYER-1 appeal is untimely. This appeal will be scheduled for further proceedings.

Aimee Nielson-Larios
Administrative Law Judge

ORDER

Based on the forgoing, the Commission hereby denies the Division's motion to dismiss the Taxpayer's appeal. The matter will be scheduled for further proceedings. It is so ordered.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. 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 Ann. §§ 59-1-601 et seq. and 63G-4-401 et seq.