

12-2785
TAX TYPE: INCOME TAX
TAX YEAR: 2010
DATE SIGNED: 4-25-2013
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 and TAXPAYER-2, Petitioners, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>ORDER DENYING RESPONDENT'S MOTION TO DISMISS</p> <p>Appeal No. 12-2785</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2010</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1

For Respondent: RESPONDENT, Manger, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on April 15, 2013 for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division based its Motion to Dismiss on the contention that Petitioners' ("Taxpayers") Petition for Redetermination was not timely filed.

APPLICABLE LAW

Utah Code §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...

The time for filing an appeal is governed by Rule R861-1A-20 of the Utah Administrative Rules, as follows in pertinent part:

- (2) Except as provided in Subsection (3), a petition for redetermination must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

- (a) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or
- (b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period.

The time for filing a petition is governed by Rule R861-1A-22 of the Utah Administrative Rules, as follows in relevant part:

- A. Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

DISCUSSION

The Division issued a Notice of Deficiency to the Taxpayers on October 4, 2012, mailed to ADDRESS, CITY-1, UT #####. Taxpayers do not contend the notice was sent to the wrong address, and it was, in fact, the same address that they had used when filing this appeal. The Notice of Deficiency explained the appeal procedures and instructed the Taxpayers that if they disagree with the audit, they would need to file a Petition for Redetermination by November 3, 2012. At the hearing the representative for the Division acknowledged that November 3, 2012 was a Saturday and, therefore, the Taxpayers would have had until the following Monday, November 5, 2012, to file the appeal. The Division maintains that the Taxpayer's Petition for Redetermination was not received by the Commission until November 8, 2012, which is the date stamped on the envelope as "Received State Tax Commission Received by Auditing Division." The Division's representative acknowledged that she was unable to read the postmark date on the envelope in which the Petition had been mailed, so the Division was making its motion based on the date received rather than the postmark date.

A copy of the envelope was provided with the appeal and it does show that the envelope had been postmarked on a day in November. However, which day in November is completely illegible. The Taxpayers had signed the Petition for Redetermination form and listed for the "Date Signed" November 2, 2012.

The Taxpayer testified that he had personally taken the Petition to the POST OFFICE and put it in the mail on the last of the thirty-days. It was his contention that if there was a delay, it had been due to the time it took the Post Office to deliver the mail from CITY-2 to the State Tax Commission in Salt Lake City. In situations where a postmark is illegible, the Commission may consider Utah Code §68-3-8.5 for guidance which allows the sender to establish by competent evidence that the filing was mailed on or

before the due date. In this case the Taxpayer's testimony and other factors may be considered to establish the date that the petition had been mailed.

The thirty-day requirement for filing an appeal is set by statute and is a jurisdictional requirement under Utah Code Ann. §59-1-501. Utah Administrative Rule R861-1A-20 provides that a Petition for redetermination must be received in the commission offices, or postmarked, no later than 30 days from the date of the statutory notice. Utah Admin. Rule R861-1A-22 provides that if the thirty-day deadline falls on a weekend or holiday, as occurred in this case, the due date is extended to the next business day. Based on this the due date of the appeal was Monday, November 5, 2012. If the appeal had been received at the Tax Commission or postmarked by this date it would have been considered timely. The envelope was stamped as received at the Tax Commission on November 8, 2012. It had a postmark, but the date is not legible. However, it must have been mailed at least a day or two prior to the date received of November 8, 2012, and a mailing three days prior is not implausible for a postal delivery. Additionally, in support of a timely mailing is the testimony from the Taxpayer that he personally took the letter to the post office and mailed within the deadline. With both the nearness to the deadline that the Petition must have been mailed and the Taxpayer's testimony, the weight of the evidence is in support of the Taxpayer. The Motion to Dismiss should be denied.

Jane Phan
Administrative Law Judge

ORDER

Based on the foregoing, the Commission hereby denies the Division's Motion to Dismiss. This matter will be scheduled for a Telephone Status Conference to discuss further administrative hearing procedures. It is so ordered.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Appeal No. 12-2785

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.