

13-1647  
TAX TYPE: INCOME TAX  
TAX YEAR: 2007  
DATE SIGNED: 2-4-2014  
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,  Petitioner,  vs.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>ORDER DENYING RESPONDENT'S MOTION TO DISMISS</b>  Appeal No. 13-1647  Account No. ##### Tax Type: Income Tax Tax Year: 2007  Judge: Nielson-Larios
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**Presiding:**

Aimee Nielson-Larios, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER, in person  
For Respondent: RESPONDENT, Auditing Division, in person

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 8, 2013 for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division based its Motion to Dismiss on the contention that Petitioner's ("Taxpayer") 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...

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.

Utah Code Ann. § 59-1-1404(4) states:

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.**

(Emphasis added.)

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

- (2) Except as provided in Subsection (3), a petition for redetermination of a deficiency 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) in the case of mailed or hand-delivered documents:
    - (i) 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
    - (ii) 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; or
  - (b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

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

- (1) 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

On October 5, 2012, the Division issued a Notice of Deficiency and Audit Change (“Notice” or “Notice of Deficiency”) for the 2007 tax year to the following address:

ADDRESS-1  
CITY-1 UT #####

The Division stated that this address was based on the Taxpayer’s last-filed Utah income tax return, a 2007 Utah individual income tax return that was filed June 19, 2012. The address on that return is as follows:

ADDRESS-2  
CITY-2 UT #####

The Division also explained that the auditor updated the Taxpayer’s address based on a 2007 tax return sent to the auditor on April 24, 2012. The Division explained that prior to receiving the 2007 tax returns,

the Division had received the Taxpayer's 2011 Utah individual income tax return on April 11, 2012. The 2011 tax return has an address of:

ADDRESS-3  
CITY-1, UT #####

The Division explained that it issued the Notice of Deficiency to the address from the 2007 tax return filed June 19, 2012 instead of the address from the 2011 tax return because the 2007 tax return was received after the 2011 tax return.

The Division's Notice of Deficiency explains the appeals procedures and instructs the Taxpayer that if he disagrees with the audit, he must file a petition within 30 days of the date of the Notice. The Taxpayer's Petition for Redetermination ("petition") was not received by the Commission until June 27, 2013, based on the date stamped by the Appeals Unit of the Tax Commission. The Division's representative asks the Commission to dismiss the Taxpayer's appeal because it was not received within the 30-day time period.

The Taxpayer explained that he did not receive the Notice of Deficiency and the other tax notices issued from May 15, 2012 to February 15, 2013 because the Tax Commission issued these notices to incorrect addresses. On May 15, 2012, a Notice of Lien and Intent to Offset for the 2007 tax year was issued to the following address:

ADDRESS-4  
CITY-1 UT #####

For this Notice of Lien, RESPONDENT with the Auditing Division explained that a 2007 tax return was sent by the Taxpayer to the auditor on April 24, 2012, and then the return was sent by the auditor to the Processing Division. RESPONDENT was unsure why no apartment number was included in the above address.

On July 16, 2012, two Request for Verification notices for the 2007 tax year were issued to the following address:

ADDRESS-1  
CITY-1 UT #####

Also issued to the above address was the Notice of Deficiency for the 2007 tax year on October 5, 2012. On February 15, 2013, a Notice of Lien for the 2007 tax year was issued to the following address:

ADDRESS-5  
CITY-2 UT #####

The Taxpayer noted that the three above addresses were not identical and asserted that the differences in the addresses show the Tax Commission had issues in correctly determining his address.

The Taxpayer explained that before the notices were sent to his incorrect address, he received a Notice of Taxes Due and Intent to Lien for the 2007 tax year, issued on March 15, 2012, at his then correct address of:

ADDRESS-6  
CITY-1, UT #####

He said he responded to that notice by filing his 2007 Utah income tax return with payment of tax, interest, and penalties, on June 16, 2012. He submitted evidence showing the Tax Commission cashed his payment check on June 20, 2012.

He explained that because he did not hear again from the Tax Commission for an extended time period, he thought the matter with 2007 was resolved, until he received a Statement of Account for Delinquent Taxes dated May 15, 2013. That notice was issued to the following address:

ADDRESS-7  
CITY-3 UT #####

This address is the Taxpayer's current address, based on the Taxpayer's petition.

The Taxpayer explained that he was unaware of the Tax Commission's actions between the Notice of Taxes Due and Intent to Lien issued on March 15, 2012 and the Statement of Account for Delinquent Taxes issued May 15, 2013, and likewise he did not timely receive the appeals instructions because of the address issue. He explained that he started contacting the Tax Commission and working with the auditor shortly after he received the May 15, 2013 Statement of Account and Delinquent Taxes and that the auditor instructed him to file his appeal, which he did on June 27, 2013.

The Taxpayer also explained that he used his 2007 address on his 2007 Utah tax return because all other information entered on the 2007 tax form comes from 2007. He asserted that both the 2007 income tax form and the instructions failed to instruct taxpayers on which address to use when a taxpayer files late. The Taxpayer included a copy of the instructions which state the following on page 5: "Type or print your . . . address . . . in the spaces provided. . . ." It is uncontested that the instructions do not plainly address whether a taxpayer's current address or 2007 address should be included on the tax return.

The thirty-day requirement for filing an appeal is set by statute and is a jurisdictional requirement. The Notice of Deficiency was issued by the Division on October 5, 2012. The Taxpayer's Petition for Redetermination was received by the Commission on June 27, 2013, based on the date stamp. This is beyond the 30-day time period provided in Utah Code Ann. § 59-1-501. Utah Administrative Code 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. This language is not discretionary, and the appeal should be dismissed absent extraordinary circumstances that interfered with Taxpayer's due process rights. In general, such extraordinary circumstances involve actions by the Tax Commission that interfered with a taxpayer's due process rights.

In this case, it is uncertain whether the Taxpayer received due process. Before the Tax Commission changed the Taxpayer's address based on the 2007 tax return filed on June 19, 2012, there were communications between an auditor and the Taxpayer. The nature and the extent of these communications are not known based on the facts presented at the hearing on motion. Therefore, some question exists as to whether the Tax Commission was justified in using the address from the Taxpayer's last-filed return in this case. Furthermore, even if the Tax Commission was justified, the Tax Commission still failed to include the hyphen in the apartment number; the Tax Commission used "I302" instead of "I-302." This use of the "I" without a hyphen creates ambiguity; "APT I302" could have been misread as "APT 1302." In summary, because of the uncertainties presented, the Division's motion to dismiss should be denied.

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Aimee Nielson-Larios  
Administrative Law Judge

ORDER

Based upon the foregoing, the Commission denies the Division's motion to dismiss. This appeal will be scheduled for future proceedings, such as for a telephone status conference. The Appeals Unit will mail a scheduling notice providing the exact date and time of the next scheduled event. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner