

13-2348  
TAX TYPE: INCOME TAX  
TAX YEAR: 2010  
DATE SIGNED: 3-18-2014  
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN  
EXCUSED: R. PERO  
GUIDING DECISION

---

BEFORE THE UTAH STATE TAX COMMISSION

---

TAXPAYER-1 AND TAXPAYER-2,  Petitioner,  vs.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>ORDER DENYING RESPONDENT'S MOTION TO DISMISS</b>  Appeal No. 13-2348  Account No. ##### Tax Type: Income Tax Tax Year: 2010  Judge: Nielson-Larios
---	---

---

**Presiding:**

Aimee Nielson-Larios, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER-1, by telephone  
For Respondent: RESPONDENT, Auditing Division, in person

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on February 18, 2014 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...

Filing within the thirty-day deadline provided in § 59-1-501(3)(a) is governed by Utah Administrative Code R861-1A-20, which 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) 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.

Further guidance on the filing deadline is provided in 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 3, 2013, the Division issued a Notice of Deficiency (“Notice” or “Statutory Notice”) to the Taxpayer. The Notice included a page titled “Appeals Instructions” that explains the appeals procedures and instructs the Taxpayer that if she disagrees with the audit, she must file a petition by November 2, 2013, which is 30 days from the date of the Notice. The Division explained that because November 2, 2013 was a Saturday, the Taxpayer had until Monday, November 4, 2013, to file a timely petition. The Division explained that the Taxpayer’s Petition for Redetermination was not received by the Commission until November 5, 2013, the date it was signed by the Taxpayer and stamped as received by the Appeals Unit. The Division’s representative asks the Commission to dismiss the Taxpayer’s appeal because the petition was not received within the 30-day time period.

Taxpayer does not contend the Notice was sent to the wrong address. However, she does contend that she did not receive it, that she asked for a copy of it from the auditor on October 17, 2013, and that the auditor did not give her the copy until November 5, 2013. The Taxpayer submitted a copy of email correspondence between the Taxpayer and the auditor from October 3, 2013 to November 5, 2013. On October 3, 2013, the Taxpayer emailed the auditor a letter from a case worker. On October 8, 2013 the

Appeal No. 13-2348

auditor emailed the Taxpayer, stating that the Division was reviewing the letter and the audit. On October 11, 2013, the auditor emailed the Taxpayer, explaining that the Division was not allowing the special needs adoption credit (“Credit”) for one of the children. In that email, the auditor also wrote:

Keep in mind if you disagree with the audit change, you have until Nov. 2 to file an appeal. Please find the appeal instructions on the last page of the assessment letter dated Oct. 3, 2013.

Please let me know if you have questions.

On October 17, 2013, the Taxpayer emailed a response to the auditor, stating:

NAME  
Will you please forward me the last letter. I have not received it.  
Thank you  
TAXPAYER-1

On November 5, 2013, the auditor responded by email, stating:

TAXPAYER-1,

Here is a copy of the assessment letter dated Oct. 3, 2013.

The Taxpayer also testified that she called the auditor between October 17, 2013 and November 5, 2013, requesting the Notice. However, the Division’s representative testified that it had no record of any calls or conversations with the Taxpayer between these dates.

Additionally, the Division commented in the hearing that the auditor, through the October 11, 2013 email, informed the Taxpayer of the appeals deadline.

Lastly, the Division’s representative told the Taxpayer during the hearing that she may continue to work with the Division to provide more documentation to show she is entitled to the Credit for the child.

The thirty-day requirement for filing an appeal is set by statute and is a jurisdictional requirement. The Statutory Notice was issued by the Division on October 3, 2013. The Taxpayer’s Petition for Redetermination was received by the Commission on November 5, 2013. This is beyond the 30-day deadline provided in Utah Code § 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

Appeal No. 13-2348

taxpayer's due process rights.

In this case, there is evidence of extraordinary circumstances; thus, the appeal should not be dismissed. The Tax Commission did not timely provide a copy of the Statutory Notice to the Taxpayer after the Taxpayer told the Tax Commission she did not receive the Statutory Notice and she requested a copy on October 17, 2013. Although the auditor informed the Taxpayer on October 11, 2013 of the appeals deadline, the auditor did not provide the Statutory Notice, which had the "Appeals Instructions," until after the appeals deadline had passed.

Aimee Nielson-Larios  
Administrative Law Judge

ORDER

The Commission hereby denies the Division's motion to dismiss. The Taxpayer's appeal is to remain open. The next scheduled event will be a telephone status conference. The Appeals Unit will issue a Notice of Telephonic Status Conference to the parties, giving the exact date, time, and place of that telephone status conference. 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