

14-1475
TAX TYPE: CIRCUIT BREAKER TAX EXEMPTION
TAX YEAR: 2013
DATE SIGNED: 2-4-2015
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, vs. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>ORDER ON RESPONDENT'S MOTION TO DISMISS</p> <p>Appeal No. 14-1475</p> <p>Account No. ##### Tax Type: Circuit Breaker Tax Exemption Tax Year: 2013</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER
For Respondent: RESPONDENT, Audit Manager, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 22, 2015 for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division had requested this appeal be dismissed on the basis that the Petitioner ("Taxpayer") did not have an appealable claim under Utah Code 59-2-1217.

APPLICABLE LAW

A person claiming requesting a circuit breaker renter's refund may appeal a decision denying the credit under Utah Code Sec. 59-2-1217 as follows:

Any person aggrieved by the denial in whole or in part of relief claimed under this part, except when the denial is based upon late filing of claim for relief, may appeal the denial to the commission by filing a petition within 30 days after the denial.

Guidance on the filing deadline is provided in Rule R861-1A-22 of the Utah Administrative Rules, 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

Petitioner had filed on December 23, 2013, a 2013 TC-40CB to claim his circuit breaker refund and the Division did issue to him the amount of refund claimed by the Taxpayer on the TC-40CB. Therefore, the Division had not denied in whole or in part, any portion of the refund claimed. Later, on April 14, 2014, the Taxpayer sent a letter to NAME-1, Taxpayer Services Division, indicating disagreement with the revised instructions on the Application Form TC-40CB. There was a response to the Taxpayer's letter on April 23, 2014 from Audit Manager NAME-2, in which he states that the instructions were correct and consistent with a prior Tax Commission decision. There was further correspondence between the Taxpayer and the attorney for the Division and then on June 6, 2014, the Taxpayer addressed a letter to the "Appeals Division Utah State Tax Commission" in which he requested, "the Appeals Division to order the Taxpayer Services Division to send me a valid and legal Application Form TC-40CB for tax year 2012 that I can complete." This letter did not expressly state it was an appeal or Petition for Redetermination, but because it was requesting an order from the Appeals Unit, it was treated as a request for an appeal and Appeal No. 14-1475 was opened.

It is the Division's position that the Taxpayer does not have the right to request an appeal under Utah Code Sec. 59-2-1217, because the Division had issued to the Taxpayer the entire amount of refund he had claimed on the 2-13 TC-40-CB and also because his "Appeal" had been filed after the thirty-day deadline.

It was the Taxpayer's position that he did not file an appeal. He points out that he did not file a Petition for Redetermination form and his June 6, 2014 letter did not state it was a formal petition for redetermination, so, therefore, no appeal exists. He did also indicate regarding the thirty-day period he did file his first correspondence to the Division as soon as he understood that there had been no law change and concluded that the revision to the TC-40CB was in error.

Upon review of the parties' arguments, the appeal should clearly be dismissed. Regardless of the Division's argument that there is no appealable action based on the statute, which does have merit, it is the Taxpayer's position that he did not file an appeal or Petition for Redetermination. It is the Taxpayer who has the right to file an appeal under the statute. As the Taxpayer has now clarified his June 6, 2014

letter was not intended to be an appeal, then no appeal request has been received and the appeal needs to be closed.

The Taxpayer should note that the Appeals Unit does not have authority to act on the request made by the Taxpayer in his June 6, 2014 letter, outside of an open administrative appeal. Therefore no action will be taken after dismissal of this appeal. Taxpayers generally only have the right to file an administrative appeal pursuant to specific statutory provisions, for example Utah Code 59-2-1217, 59-1-501 or 59-1-1410. None of these provisions appear to apply, although the Taxpayer has now made clear that he did not request a formal appeal.

Therefore, this appeal should be closed by Order of Dismissal.

Jane Phan
Administrative Law Judge

ORDER

Based on the foregoing, the Commission hereby dismisses the Taxpayer's appeal. It is so ordered.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Appeal Rights and Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied. If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.