

06-0093
Audit
Signed 06/12/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	ORDER GRANTING
)	MOTION TO DISMISS
Petitioner,)	
)	Appeal No. 06-0093
v.)	
)	Account No. #####
AUDITING DIVISION OF THE)	Tax Year: 2001 & 2002
UTAH STATE TAX COMMISSION,)	Tax Type: Individual Income Tax
)	
Respondent.)	Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Attorney for Petitioner
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, from the Auditing Division
 RESPONDENT REPRESENTATIVE 3, from the Auditing Division

STATEMENT OF THE CASE

On March 7, 2006, Auditing Division (“Division”) filed a Motion to Dismiss (“Motion”) this matter, in which it stated that the Petitioner did not timely file a Petition for Redetermination to appeal the audit assessments it had issued for the 2001 and 2002 tax years. On May 18, 2006, the matter came before the Commission for a Hearing on the Motion.

At the hearing, the Division provided copies of the Statutory Notices of Estimated Income Tax (“Statutory Notices”) for the 2001 and 2002 tax years that it sent to the Petitioner (copies included in Exhibit R-1). The Statutory Notices are dated March 23, 2005 and were sent to the following address:

PETITIONER
ADDRESS 1

The Division asserts that the Commission does not have jurisdiction to hear the appeal because the Petitioner did not file a Petition for Redetermination within 30 days after the March 23, 2005 date mailing

date of the Statutory Notices. Pursuant to the its argument that the statutory period to appeal is 30 thirty days, the Division asserts that the Petitioner was required to file his Petition for Redetermination on or before April 22, 2005, to have retained his appeal rights and for the Commission to have jurisdiction. The Division asserts that the Petitioner did not appeal until January 31, 2006, when his attorney, PETITIONER REPRESENTATIVE, submitted a Petition for Redetermination (copy included in Exhibit R-1).

The Division contends that it complied with Utah law by sending the Statutory Notices to the Petitioner's "last-known address," as determined by Division employee RESPONDENT REPRESENTATIVE 3. RESPONDENT REPRESENTATIVE 3 testified that he first sent a letter to the Petitioner at the post office box in STATE in November 2004, requesting information about his income tax domicile for the 2001 and 2002 tax years. RESPONDENT REPRESENTATIVE 3 stated that the Division never received a response from the Petitioner concerning the request. Subsequently, RESPONDENT REPRESENTATIVE 3 sent the Statutory Notices to the Petitioner at the same address on March 23, 2005. RESPONDENT REPRESENTATIVE 3 explained that he choose the post office box in STATE as the Petitioner's "last-known address" because the Petitioner had used this address on his federal income tax returns, as shown on information provided to the Division by the Internal Revenue Service. The Division also stated at the hearing that the Petitioner's more recent federal income tax returns, specifically for the 2003 and 2004 tax years, also show his address to be the same post office box in STATE.

Because the Petitioner did not pay the amounts due in the Statutory Notices or appeal the assessments before the April 22, 2005 deadline, the Tax Commission began collection proceedings and on September 8, 2005, issued a tax lien against the Petitioner. After the tax lien was issued, the Petitioner's son contacted RESPONDENT REPRESENTATIVE 3 to discuss the assessments. After the son submitted a power of attorney document, RESPONDENT REPRESENTATIVE 3 asked the son to provide a response to a

questionnaire concerning the Petitioner's domicile for the 2001 and 2002 tax years. At the hearing, RESPONDENT REPRESENTATIVE 3 explained that the Division was willing to consider the responses and reverse its audit assessment if the information received convinced the Division that its assessment was incorrect, even though the Petitioner had not filed an appeal of the assessments within the 30-day statutory period. RESPONDENT REPRESENTATIVE 3 also stated that he did not recall discussing the Petitioner's appeal rights with the Petitioner's son.

In a letter dated December 1, 2005 (Exhibit P-1), RESPONDENT REPRESENTATIVE 3 informed the Petitioner that the Division had reviewed the information his son had submitted and decided that the information did not convince the Division that its assessments were incorrect. In the letter, RESPONDENT REPRESENTATIVE 3 also informed the Petitioner that the period to file a Petition for Redetermination had lapsed, because no petition was filed within 30 days of the March 23, 2005 Statutory Notices.

After the Division sent its December 1, 2005 letter, the Petitioner retained PETITIONER REPRESENTATIVE to represent him concerning the assessments. During December 2005 and January 2006, the Division and PETITIONER REPRESENTATIVE exchanged information and had telephone discussions, which led to PETITIONER REPRESENTATIVE filing the Petition for Redetermination on behalf of the Petitioner on January 31, 2006.

The Division asks the Commission to grant its Motion by finding that it mailed the March 23, 2005 Statutory Notices to the Petitioner's last-known address, as required by law, and that the Petitioner did not appeal within the 30-day statutory period. In the alternative, should the Commission determine that the March 23, 2005 Statutory Notices were inadequate, the Division asks the Commission to grant its Motion by finding that the Petitioner's son did not appeal within 30 days of receiving notice of the assessments from

RESPONDENT REPRESENTATIVE 3 in September 2005. Lastly, as a second alternative, should the Commission find that the March 23 Notices were inadequate and that the Petitioner's son was not adequately informed about the appeal procedures, the Division asks the Commission to grant the Motion by finding that the PETITIONER REPRESENTATIVE did not appeal within 30 days of his first contact with the Division in December 2005.

PETITIONER REPRESENTATIVE asks the Commission to deny the Division's Motion by finding that exceptional circumstances exist to extend the 30-day statutory appeals period to January 31, 2006, the date he filed the Petition for Redetermination. PETITIONER REPRESENTATIVE explained that such a result would be just and is required to ensure due process, given that the Petitioner had moved to COUNTRY in 2004 and still lives there and, as a result, never received the Statutory Notices. Furthermore, PETITIONER REPRESENTATIVE argues that the Petitioner was not aware of the assessments until September 2005, after which his son contacted the Division and cooperated with the Division to provide the information it asked for. PETITIONER REPRESENTATIVE also argues that neither the Petitioner's son nor he was aware of the 30-day statutory appeals period until mid-January 2006, when the Division forwarded him a copy of the appeal rights that were included on the March 23, 2005 Statutory Notices. Because he filed the Petition for Redetermination within two weeks of receiving a copy of the appeals rights that were included on the March 23, 2005 Statutory Notices, he asks the Commission to deny the Division's Motion.

APPLICABLE LAW

Utah Code Ann. §59-10-524(1) provides that “[i]f the commission determines that there is a deficiency in respect of the tax imposed by this chapter, it shall send notice of the deficiency to the taxpayer at the taxpayer's last-known address.”

UCA §59-10-525(1)(a) provides that unless the taxpayer has previously filed a petition for redetermination of the deficiency as provided in Title 59 Chapter 1, Part 5, a notice of deficiency shall constitute a final assessment “upon the expiration of 30 days . . . after the date of mailing of the notice of deficiency to the taxpayer[.]”

DISCUSSION

The Division mailed Statutory Notices of income tax deficiency for the 2001 and 2002 tax years to the Petitioner on March 23, 2005. Section 59-10-525(1)(a) provides that a notice of income tax deficiency is final unless the taxpayer files a Petition for Redetermination within 30 days of the date of the notice being mailed. Pursuant to this statute, the last date for a taxpayer to appeal a Statutory Notice deficiency mailed on March 23, 2005 would be April 22, 2005. Otherwise, the assessment is final and the Tax Commission no longer has jurisdiction to hear an appeal on the matter.

In this case, the Petitioner did not file a Petition for Redetermination within the 30-day statutory period. Accordingly, the Commission will find the deficiencies at issue to be final and grant the Division’s Motion to Dismiss unless it is shown that the Division mailed the Statutory Notices to an address other than the one required by law or that the Division, in some other manner, precluded the Petitioner from receiving due process.

Last-Known Address When Statutory Notices were Mailed. Section 59-10-524(1) provides that the Commission shall send notice of an income tax “deficiency to the taxpayer at the taxpayer’s last-known address.” PETITIONER REPRESENTATIVE contends that the Petitioner was living in COUNTRY when the Statutory Notices were mailed to the post office box in CITY, STATE, and, as a result, the Petitioner did not receive the notices in order to file an appeal within the 30-day statutory period. The Commission considers the term “last-know address,” as used in Section 59-10-524, to be an address that the Commission has or should

have knowledge of. Accordingly, notice of a Utah income tax assessment is adequate if sent to such an address, even though the address may not be the Petitioner's current address.

The Commission finds that the evidence and testimony provided at the hearing suggest that the Division sent its Statutory Notices to the Petitioner's "last-known address." PETITIONER REPRESENTATIVE contends that the Petitioner "moved" to COUNTRY in 2004 and still lives there. However, the power of attorney document that PETITIONER REPRESENTATIVE submitted (included in Exhibit R-1) shows that the Petitioner maintained ties with STATE as late as December 16, 2005, the date he signed the document, which identifies the Petitioner's address to be in CITY, STATE.

Furthermore, the Petitioner used the post office box address in STATE to which the Division sent its Statutory Notices as his address when he filed his federal income tax returns for tax years 2001 through 2004. The Commission notes that the Petitioner's federal income tax notice for the 2004 tax year would have been due no sooner than April 15, 2005, nearly a month after the Statutory Notices were mailed. Copies of the Petitioner's 2001 and 2002 federal income tax returns, which the Petitioner included with his Petition for Redetermination, confirm the Division's assertion that the Petitioner used the post office address on his 2001 and 2002 federal returns. No documents were submitted to confirm the Division's assertion that the Petitioner used the same address on his 2003 and 2004 federal returns.

Nevertheless, PETITIONER REPRESENTATIVE did not challenge the Division's assertion that the Petitioner used the post office address in STATE as his address on his 2001 through 2004 federal income tax returns. Nor did PETITIONER REPRESENTATIVE present arguments or evidence to show that the Commission knew or should have known of another address to notify the Petitioner of it March 23, 2005 assessments. For these reasons, the Commission finds that the Division took adequate measures to send its Statutory Notices to the Petitioner's "last-known address."

Subsequent Division Actions and Due Process. In September 2005, the Petitioner's son contacted the Division concerning the assessments it had imposed upon his father, the Petitioner. The Division asked the Petitioner's son to provide additional information with which it might confirm its assessments or, should the information convince the Division that its assessments were incorrect, reverse them. Although the Division was willing to review its determinations and asked the Petitioner's son for information, the Commission does not find that the Division's actions deprived the Petitioner of due process and extended the appeals period. Furthermore, to find otherwise could discourage the Division from considering additional information and correcting an assessment after a taxpayer no longer has the right to appeal an assessment. When appropriate, the Commission encourages the Division to consider new information, even though the taxpayer may not have retained his appeal rights.

Motion to Dismiss. The Petitioner did not file a Petition for Redetermination within the 30-day statutory period after the Division mailed its Statutory Notices to the Petitioner. Because the Division mailed the notices to the Petitioner's "last-known address" and did not deprive the Petitioner of due process through its subsequent actions, the Commission finds that the assessments imposed in the Statutory Notices are final pursuant to Sections 59-10-524 and 59-10-525. For these reasons, the January 31, 2006 Petition for Redetermination was untimely, and accordingly, the Commission grants the Division's Motion to Dismiss this appeal.

Current Last-Known Address to be used in the Future. On the Petition for Redetermination that PETITIONER REPRESENTATIVE provided on behalf of the Petitioner, he indicated that the Petitioner's mailing address should be:

PETITIONER
ADDRESS 2

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However, when the Appeal Division sent mail to PETITIONER at this address, it was "returned to sender." Accordingly, the Commission will use the ADDRESS 1 address that PETITIONER provided on the Power of Attorney that he signed on December 16, 2005 and that PETITIONER REPRESENTATIVE provided on or after that date. Until notified otherwise, the Commission, as of the date of this Order, considers PETITIONER'S "last-known address" to be:

PETITIONER
ADDRESS 3

ORDER

Based upon the Commission's review of the motion and consideration of the parties' positions, the Motion to Dismiss is hereby granted and the appeal is dismissed. It is so ordered.

DATED this _____ day of _____, 2006.

Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE COMMISSION.

The undersigned have reviewed this motion and concur in this decision.

DATED this _____ day of _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

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Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission pursuant to Utah Code Ann. §63-46b-13. 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 63-46b-13 et seq. In order to appeal to the District Court or the Utah Supreme Court, you must post security or obtain a waiver under Utah Code Sec. 59-1-611. Failure to pay any remaining balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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