

06-0388  
Audit  
Signed 09/07/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>ORDER GRANTING</b>
	)	<b>MOTION TO DISMISS</b>
Petitioner,	)	
	)	Appeal No.    06-0388
v.	)	
	)	Account No.    #####
AUDITING DIVISION OF THE	)	Tax Year    2003
UTAH STATE TAX COMMISSION,	)	Tax Type:    Income
	)	
Respondent.	)	Judge:        Chapman

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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER  
                    PETITIONER REPRESENTATIVE, CPA  
For Respondent:    RESPONDENT REPRESENTATIVE, from the Auditing Division

STATEMENT OF THE CASE

On May 18, 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 assessment it had issued for the 2003 tax year. On July 20, 2006, the matter came before the Commission for a Hearing on the Motion.

At the hearing, the Division stated that it mailed a Statutory Notice of Audit Change (“Statutory Notice”) for the 2003 tax year to the Petitioner on December 9, 2005. The Statutory Notice was mailed to the following address:

PETITIONER  
ADDRESS 1

The Division asserts that the Commission does not have jurisdiction to hear the Petitioner’s appeal because he did not file a Petition for Redetermination within 30 days of the Division mailing its Statutory Notice on December 9, 2005. The Division contends that the Petitioner’s Petition for

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Redetermination should have been filed on or before January 9, 2006 to satisfy the 30-day deadline. It further states that the Petitioner did not file an appeal until March 27, 2006, when the Petitioner mailed a letter asking that the Division's assessment be reversed. Because the appeal was filed after the 30-day appeal period, the Division asserts that its audit assessment is final and that the Commission must dismiss the appeal.

The Petitioner believes the Motion to Dismiss should be denied for two reasons: 1) the Division did not send the Statutory Notice to his current address; and 2) the Division did not send the Statutory Notice by certified mail. Pursuant to his first argument, the Petitioner claims that he never received the Statutory Notice because he had moved from the ADDRESS 1 address to which it was sent prior to December 2005. The Petitioner contends that he has lived at ADDRESS 2, since September 2004 and that the Statutory Notice, which the Division mailed more than a year after he moved, was not forwarded to this new address.

The Petitioner further explains that he was not aware of the Division's assessment until he received a Notice and Demand for Payment of Taxes / Notice of Warrant ("Notice and Demand") dated March 10, 2006. That Notice and Demand, like the Statutory Notice, was sent to his "old" address in ADDRESS 1. The Petitioner asserts that he filed his appeal within days of receiving the Commission's March 2006 Notice and Demand. For this reason and because the Statutory Notice was neither sent by certified mail nor to his current address, the Petitioner asks the Commission to deny the Motion to Dismiss.

#### APPLICABLE LAW

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

§59-1-501 provides that “[a]ny taxpayer may file a request for agency action, petitioning the commission for redetermination of a deficiency.”

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 the Statutory Notice of income tax deficiency for the 2003 tax year to the Petitioner on December 9, 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 deficiency assessed in a properly mailed Statutory Notice would be January 9, 2006. 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 deficiency 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 or in a manner other than required by law.

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.” The Petitioner proffered that he had been living in CITY for more than a year when the Statutory Notice was mailed to the ADDRESS 1 address and, as a result, did not receive the notice 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 Petitioner’s most recent filing of a return with the Utah State Tax Commission was for tax year 2003. Because the Petitioner submitted this income tax return prior to moving to CITY, he listed his address as the ADDRESS 1 address to which the Statutory Notice was mailed. The ADDRESS 1 address provided on the Petitioner’s 2003 Utah tax return is the last address of which the Commission had notice prior to mailing its Statutory Notice. Although the Petitioner may have used his CITY address on his 2004 federal income tax return prior to the Statutory Notice being mailed in December 2005, the Commission was not sent a copy of that return and, as a result, had no notice of the address used on it. For these reasons, the Commission finds that the Division neither knew nor should have known of the Petitioner’s current address in CITY when it mailed its Statutory Notice in December 2005. Accordingly, the Commission finds that the Division sent its Statutory Notice to the Petitioner’s “last-known address,” as required by law.

Furthermore, Section 59-10-524 does not require that the Division send a Statutory Notice of income tax deficiency by certified mail. Although Utah law requires that the Commission use certified mail for certain specified notices, it does not require the use of certified mail for a statutory notice of income tax deficiency. Accordingly, the Commission finds that the Division’s use of regular delivery to mail its December 9, 2005 Statutory Notice to the Petitioner satisfies statutory requirements.

Based on the evidence and testimony received at the hearing, the Commission finds that the Division mailed the Statutory Notice to the Petitioner’s “last-known address” in accordance with Utah law and that the Petitioner did not appeal the assessment within the 30-day statutory period. For these reasons, the Commission finds that the assessment imposed in the Statutory Notice is final pursuant to Sections 59-10-524

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and 59-10-525 and grants the Division's Motion to Dismiss this appeal.

ORDER

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Kerry R. Chapman  
Administrative Law Judge

BY ORDER OF THE COMMISSION:

The undersigned Commissioners have reviewed this matter and concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
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 Ann. §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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