

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	ORDER GRANTING MOTION TO DISMISS Appeal No. 06-1173 Account No. ##### Tax Type: Income Tax Tax Years: 1996, 1997 & 2001 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE (by telephone)
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, from Auditing Division

STATEMENT OF THE CASE

On October 25, 2006, Auditing Division (“Division”) filed a Motion to Dismiss this matter on the basis that PETITIONER did not file his Petition for Redetermination within the 30-day statutory appeals period. On July 18, 2007, this matter came before the Commission for a Hearing on Motion, at which time both parties had an opportunity to present oral arguments.

At the hearing, PETITIONER testified that he could provide a copy of a 2001 Utah tax return that his wife filed in April 2002 that shows a different address than that to which the Division mailed its Statutory Notices of Estimated Income Tax (“Statutory Notices”). PETITIONER submitted the 2001 tax return on July 25, 2007. The Division submitted its response to the 2001 tax return on August 9, 2007.

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 §59-1-501 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 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[,]” unless the taxpayer has previously filed a petition for redetermination.

DISCUSSION

On September 17, 2004, the Division issued a Statutory Notice to both PETITIONER and his wife, PETITIONER’S WIFE, in which it imposed additional income tax for the 1996 tax year. The 1996 Statutory Notice was mailed to the following address:

PETITIONER & PETITIONER’S WIFE
ADDRESS 1

Also on September 17, 2004, the Division issued Statutory Notices for the 1997 and 2001 tax years, in which it imposed additional tax on PETITIONER, but not PETITIONER’S WIFE, for these two years. The 1997 and 2001 Statutory Notices were mailed to the same address as the 1996 Statutory Notice, as follows:

PETITIONER
ADDRESS 1

The 1996 Statutory Notice contained language informing PETITIONER and PETITIONER’S WIFE that they had until October 18, 2004 to appeal the 1996 assessment. Similarly, the 1997 and 2001 Statutory Notices contained language informing PETITIONER that he had until October 18, 2004 to appeal the assessments for these years. Neither PETITIONER nor PETITIONER’S WIFE submitted a Petition for

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Redetermination (“Petition”) for any of the years at issue until PETITIONER did so on September 5, 2006, which is nearly two years after the assessments were issued. PETITIONER clarified that he filed his appeal only on his behalf and was not filing it on the behalf of PETITIONER’S WIFE, from whom he was legally separated in June 2003.

Because PETITIONER filed his appeal for the three years at issue more than 30 days after the issuance of the Statutory Notices, the Division asserts that the Commission no longer has jurisdiction to hear an appeal concerning any of the assessments. For these reasons, the Division asks the Commission to grant its Motion to Dismiss.

PETITIONER does not contest that his appeal was filed more than 30 days after the issuance of the Statutory Notices. He explains, however, that the Division did not mail its Statutory Notices to his “last-known address,” which resulted in him not being aware of the assessments until August 2006, when he received a Statement of Delinquent Taxes informing him that he owed \$\$\$\$ in taxes, penalties, and interest for the three years. For these reasons, he asks the Commission to deny the Division’s motion and to hear his appeal of the assessments.

Section 59-10-524(1) requires the Division to mail its Statutory Notices to a taxpayer’s “last-known address.” The Division explained that it determined PETITIONER and PETITIONER’S WIFE’S last-known address by making an inquiry in 2004 concerning the address on PETITIONER’S driver’s license, which showed the ADDRESS 1 address to which they mailed the notices. In addition, the Division stated that it also reviewed the addresses on PETITIONER’S 1996, 1997, and 2001 W-2 Forms, which also showed the ADDRESS 1 address. The Division admitted, however, that it does check documents that might have been received by the Commission during the period between the tax years at issue and the date it issues its Statutory Notices.

PETITIONER acknowledges that he and his wife lived at the ADDRESS 1 address in CITY

to which the Statutory Notices were mailed until December 2001, when a fire damaged their home and they moved to another home located at ADDRESS 2 in CITY. PETITIONER states that, initially, they picked up their mail at the ADDRESS 1 property because they had intended to rebuild on the property. However, in February 2002, they decided not to rebuild and had their mail forwarded to their new home at ADDRESS 2 in CITY.

PETITIONER also testifies that he was incarcerated at the Utah State Prison from March 27, 2002 until February 28, 2006, which included the date on which the Division mailed its Statutory Notices. He does not recall having his mail forwarded from ADDRESS 2 in CITY to his address at the Utah State Prison, but believes that the Commission should have been aware of his location at the prison as he was in state custody when the Statutory Notices were issued in 2004. The Commission, however, is not required to investigate whether a taxpayer is incarcerated before issuing a notice. Because PETITIONER never informed the Commission of his address at the Utah State Prison, the Commission finds that the Division was not required to issue its Statutory Notices to PETITIONER'S address at the prison.

PETITIONER also contends that the Division should have, in the alternative, been aware of and issued the Statutory Notices to his and his wife's address at ADDRESS 2 in CITY. PETITIONER did not file a return for the 2001 tax year until his release from prison in 2006. He states, however, that PETITIONER'S WIFE gave notice of the ADDRESS 2 address to the Commission on the 2001 tax return she filed in April 2002, soon after his incarceration and more than two years prior to the Division's issuance of its Statutory Notices.

PETITIONER provided a copy of PETITIONER'S WIFE'S 2001 tax return, which she filed with the designation "married filing separate return." On PETITIONER'S WIFE'S 2001 return, she identified her "spouse's name" as "PETITIONER" and identified the "mailing address" as ADDRESS 2 in CITY. In its post-hearing response, the Division does not dispute that PETITIONER'S WIFE filed the return in April 2002.

Accordingly, it appears that PETITIONER'S WIFE gave notice to the Commission in 2002 of a mailing address that, at least for herself, was different than the address to which the Division subsequently mailed its Statutory Notices.¹ Whether or not PETITIONER'S WIFE received proper notice is not at issue, however, as PETITIONER has stated that she is not a party to the appeal. Nevertheless, the Commission must decide whether it considers the change of address PETITIONER'S WIFE identified on her 2001 return to be notice of a change of address for PETITIONER, as well.

The Division argues that the Commission was not given notice of a change of address for PETITIONER by means of the new address PETITIONER'S WIFE showed on her "separate" return. The Division contends that a "married filing separate return" pertains only to the individual filing the return and that the information shown on such a return, whether monetary or non-monetary in nature, should not be imputed to a spouse, even if the spouse is identified on the return. The Commission agrees. It is plausible that a married couple filing separate returns would have separate mailing addresses. If so, the Commission's imputation of the same mailing address for both spouses from one of their returns would be incorrect. Accordingly, the Commission finds that PETITIONER'S WIFE'S 2001 return did not give the Commission notice of a new address for PETITIONER. For this reason and because PETITIONER provided no other evidence showing that he gave notice of another address for himself prior to the issuance of the Statutory Notices, the Commission finds that the Division mailed the Statutory Notices for all three years at issue to PETITIONER'S "last-known address."

In conclusion, the Commission finds that the Division's Statutory Notices were issued to

¹ The Statutory Notice for the 1996 tax year was issued to PETITIONER'S WIFE, as well as PETITIONER. Had PETITIONER'S WIFE submitted a late-filed appeal for this year, the information submitted in this matter would suggest that the 1996 Statutory Notice was not issued to PETITIONER'S WIFE'S "last-known address," as required under Section 59-10-524(1). However, because PETITIONER has clarified that he did not file the appeal on PETITIONER'S WIFE'S behalf and PETITIONER'S WIFE has not appealed, the Commission need not issue a ruling concerning the notice issued to PETITIONER'S WIFE.

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PETITIONER in compliance with the law and that he did not file a Petition for Redetermination within the 30-day appeals period. Under the circumstances described, the Commission finds that the Petitioner was not deprived

of his due process. For these reasons and in accordance with Section 59-10-525, the Commission finds that it no longer has jurisdiction to hear the appeal.

ORDER

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

DATED this _____ day of _____, 2007.

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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

NOTICE of Payment Requirement: Any balance due as a result of this order must be paid within thirty days of the date of this order or a late penalty could be applied.

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