

07-0125
Audit
Signed 06/27/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	ORDER GRANTING
)	MOTION TO DISMISS
Petitioners,)	
)	Appeal No. 07-0125
v.)	
)	Account No. #####
AUDITING DIVISION OF THE)	Tax Year 2003 & 2004
UTAH STATE TAX COMMISSION,)	Tax Type: Income Tax
)	
Respondent.)	Judge: Chapman

Presiding:

Pam Hendrickson, Commission Chair
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Attorney
For Respondent: RESPONDENT REPRESENTATIVE, Assistant Attorney General

STATEMENT OF THE CASE

On March 14, 2007, Auditing Division (“Division”) filed a Motion to Dismiss this matter on the basis that the Petitioners did not file their Petition for Redetermination within the 30-day statutory appeals period. On May 24, 2007, this matter came before the Commission for a Hearing on Motion, at which time both parties had an opportunity to present oral arguments.

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

The Division issued Statutory Notices of Audit Change (“Statutory Notices”) to the Petitioners on December 4, 2006, for the 2004 tax year and December 5, 2006, for the 2003 tax year. The Statutory Notices were mailed to the Petitioners’ address in CITY 1, Utah, where they own a home. Furthermore, the Statutory Notices contained language informing the Petitioners that they had until January 3, 2007, to appeal the 2004 assessment and until January 4, 2007, to appeal the 2003 assessment. The Petitioners, however, did not submit their Petition for Redetermination until January 17, 2007, which is approximately two weeks after the 30-day appeals period had expired for both assessments. Because the Petitioners filed their appeal more than 30 days after the issuance of the Statutory Notices, the Division asserts that the Commission no longer has jurisdiction to hear the appeal. For these reasons, the Division asks the Commission to grant its Motion to Dismiss.

The Petitioners do not contest that their appeal was filed more than 30 days after the issuance of the Statutory Notices. However, they believe it would be unfair under the circumstances to dismiss their appeal without them having an opportunity to challenge the underlying issue that gave rise to the assessments. The Petitioners contend that they would have had a better opportunity to file the appeal in a timely manner if the Division had mailed its Statutory Notices to their address in CITY 2, STATE, where they were living in early December 2006, when the notices were issued. Because the Petitioners did not move back to their Utah home until sometime near Christmas 2006, they claim that they had insufficient time to contact their accountant during the holidays and arrange to submit their Petitioner for Redetermination prior to the expiration of the 30-day appeals period.

Section 59-10-524(1) requires the Commission to send a Statutory Notice that imposes a deficiency of income tax to a taxpayer’s last-known address. The primary issue in this matter is whether the

Division mailed its Statutory Notices to the Petitioner's last-known address. The parties asserts the following facts:

1. The Petitioners' 2003 and 2004 Utah tax returns, which they filed in 2004 and 2005, show their STATE address.

2. On May 2, 2006, the Division mailed Requests for Verification ("Requests") to the Petitioners at their STATE address. The Requests concerned the Petitioners 2003 and 2004 Utah tax liability. The Petitioners completed the Requests and returned them to the Division. On the Requests, the Petitioners provided both a STATE and a Utah telephone number and indicated that their CITY 1, Utah home was their permanent or primary home and that the CITY 2, STATE home was a temporary home.

3. During 2006, AUDITOR, an auditor in the Division, contacted the Petitioners at their STATE home both by mail and by telephone. AUDITOR never contacted the Petitioners at their Utah address until the Division issued its Statutory Notices in early December 2006.

4. On October 12, 2006, the Petitioners signed their 2005 Utah tax return and filed it with the Commission. This return shows the Petitioners' address to be in CITY 1, Utah. The Petitioners state that even though they were living in STATE when this return was filed, they knew that they would soon be returning to Utah and believed that they would need to be contacted at their Utah address for questions concerning the 2005 return.

5. Although the Petitioners had been in discussions with AUDITOR concerning their 2003 and 2004 tax liability, they were not aware that the Division had decided to issue assessments until they moved back to their Utah home near Christmas 2006, and discovered the Statutory Notices.

6. The Division did not mail a copy of the Statutory Notices to the Petitioners' tax advisor in STATE, even though the Division knew the name and address of the advisor when they issued the

notices.

Prior to October 2006, when the Petitioners filed their 2005 Utah tax return, the Commission believes that it is clear that the Petitioners' last-known address was their STATE address. However, in October 2006, the Petitioners submitted a document, specifically the 2005 Utah tax return, on which they show their address to be in CITY 1, Utah. Accordingly, the Commission finds that the Petitioners' CITY 1, Utah address is their "last-known address" in December 2006, when the Division issued its Statutory Notices.

No requirement exists in the statute requiring the Division to contact a taxpayer prior to sending a Statutory Notice. Furthermore, no requirement exists to send the Statutory Notice or a copy of it to a taxpayer's tax advisor, even if the advisor's name and address is known. For these reasons, the Commission finds that the Division's Statutory Notices were issued in compliance with the law and that the Petitioners did not file their Petition for Redetermination within 30 days of the Division issuing the assessments. In addition, the Commission does not find that the Petitioners were deprived of their due process under the circumstances described. 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

Appeal No. 07-0125

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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