

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

AUDITING DIVISION
OF THE UTAH STATE
TAX COMMISSION,

Respondent.

**ORDER DENYING
MOTION TO DISMISS**

Appeal No. 07-0449

Account No. #####

Tax Type: Income Tax

Tax Years: 2000, 2001, 2002 & 2003

Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, from Auditing Division
RESPONDENT REPRESENTATIVE 2, from Auditing Division

STATEMENT OF THE CASE

On June 7, 2007, Auditing Division (“Division”) filed a Motion to Dismiss this matter on the basis that the Petitioner did not file his Petition for Redetermination within the 30-day statutory appeals period.

On August 15, 2007, this matter came before the Commission for a Hearing on Motion, at which time both parties had an opportunity to present oral arguments. The Division submitted a Posthearing Brief on August 20, 2007, in which it provided evidence of the last tax return the Petitioner submitted prior to the Division’s issuance of the Statutory Notices giving rise to this appeal.

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 Petitioner on February 15, 2007, for the 2000, 2001, 2002, and 2003 tax years. The Statutory Notices were mailed to the Petitioner at the following address:

PETITIONER
ADDRESS 1

The Statutory Notices contained language informing the Petitioner that he had 30 days to submit an appeal of the assessments. Because the 30-day appeals period ended on a weekend, the Petitioner had until Monday, March 19, 2007, to submit an appeal. The Petitioner, however, did not submit his Petition for Redetermination until April 12, 2007. Because the Petitioner filed his 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 Petitioner does not contest that his appeal was filed more than 30 days after the issuance of the Statutory Notices. However, he explains that the Division did not send its Statutory Notices to his “last-known address,” which delayed him receiving the notices in time to meet the 30-day appeals period. The Petitioner explains that he moved from a house he was renting at ADDRESS 1 in CITY to another house he purchased at ADDRESS 2 in CITY in 1999 or 2000. Because the Division mailed its Statutory Notices to his

“old” address, the Petitioner states that the notices were misdirected and not delivered to him in time to timely file his appeal. For these reason, he asks the Commission to deny the Division’s motion so that the underlying issues in his appeal may be heard.

In its Posthearing Brief, the Division provides evidence showing that the last tax return the Petitioner submitted to the Commission prior to the Division issuing its Statutory Notices was his 2004 Utah tax return, which he filed on April 15, 2005. On this return, the Petitioner showed his address to be at ADDRESS 2 in CITY. Accordingly, the Commission finds that the Petitioner’s “last-known address,” as of the February 15, 2007 date on which the Division issued its Statutory Notices, was ADDRESS 2 in CITY. Because the Division did not mail its Statutory Notices to the Petitioner’s “last-known address,” the Commission finds that the Division did not give the Petitioner adequate notice of the assessments at issue to preclude his appeal being heard. As a result, the Commission denies the Division’s Motion to Dismiss.

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 denied. Notice of further proceedings in this matter will be mailed to the parties in the near future. It is so ordered.

DATED this _____ day of _____ 2007.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 07-0449

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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