

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,

Petitioners,

vs.

AUDITING DIVISION,  
UTAH STATE TAX COMMISSION,

Respondent.

**ORDER DENYING  
MOTION TO DISMISS**

Appeal No. 07-0765

Tax Type: Income Tax

Tax Period: 2003

Account No. ##### & #####

Judge: Robinson

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**Presiding:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1, by telephone

PETITIONER 2, by telephone

For Respondent: RESPONDENT REPRESENTATIVE, Manager, Income Tax Auditing

STATEMENT OF THE CASE

On May 4, 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 June 21, 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

On September 12, 2006, the Division sent a Statutory Notice of Audit Change to Petitioners. The Notice informed Petitioner that they were required to file an appeal within 30 days of the date on the Notice. It was sent to ADDRESS, CITY, Utah. This was the address for Petitioner in the system. The Statutory Notice informed Petitioners they had until October 12, 2006 to file an appeal of the assessment, or to submit payment.

PETITIONER 1 signed and dated a Petition for Redetermination on March 23, 2007. PETITIONER 2 signed and dated a Petition for Redetermination on April 1, 2007. The Appeals Division stamped PETITIONER 1's Petition as received on March 27, 2007. It stamped PETITIONER 2's Petition as received on April 10, 2007. Because the appeals were filed more than 30 days after the issuance of the Statutory Notice, 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 were not married to each other when PETITIONER 2 received the Statutory Notice. PETITIONER 1 was the primary taxpayer listed on the account. On June 13, 2006, PETITIONER 1 updated his mailing address in a conversation with an employee in the Auditing Division. See case number 07-0382. The Division did not use that address.

Based on the evidence, the Commission finds the Notice was not mailed to the primary taxpayer's last known address. PETITIONER 1 had provided a new address to the Division before the Notice was sent.<sup>1</sup>

ORDER

Based upon the Commission's review of the motion and consideration of the parties' evidence, the Division's Motion to Dismiss the appeal is hereby denied. This matter shall be set for a telephone status conference. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2007.

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<sup>1</sup> While PETITIONER 2 received the notice and arguably should be prohibited from proceeding for failure to file a timely appeal, this is a joint return. Because this is a matter of joint and several liability, and the appeal is open as to PETITIONER 1, there is no need to determine whether to grant the Motion as to PETITIONER 2.

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R. Spencer Robinson  
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

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