

07-1397
INCOME TAX
TAX YEARS: 2000, 2001, 2002, 2003, 2004, 2005
SIGNED: 12-23-2008
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, D. DIXON
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	ORDER DENYING PETITIONER'S REQUEST FOR RECONSIDERATION
Petitioner,	Appeal No. 07-1397
v.	Account No. #####
AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,	Tax Type: Income
Respondent.	Audit Period: 2000 – 2005
	Judge: Chapman

STATEMENT OF CASE

This matter came before the Utah State Tax Commission upon a Request for Reconsideration with the Commission (“Request”), which PETITIONER (the “taxpayer”) timely submitted on November 5, 2008. The taxpayer submitted the Request in response to the Commission’s Order Granting [Auditing Division’s] Motion to Dismiss, which it issued on October 16, 2008 (“Order to Dismiss”). The taxpayer requests that the Commission reconsider its ruling in the Order to Dismiss, alleging that the ruling not only contains mistakes of fact, but also mistakes of law.

On November 18, 2008, Auditing Division (the “Division”) submitted its Objection to Petitioner’s Request for Reconsideration (“Objection”), asking the Commission to deny the taxpayer’s Request. On December 9, 2008, the taxpayer submitted his Response to Auditing Division’s Objection (“Response”).

APPLICABLE LAW

Utah Administrative Rule R861-1A-29(2) provides that a party may file a written request for

Appeal No. 07-1397

reconsideration "alleging a mistake of law or fact, or discovery of new evidence."

Utah Admin. Rule R861-1A-22(B) ("Rule 22") (2007) provides guidance concerning the content of a Petition for Redetermination, as follows in pertinent part:

....

B. Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of Utah Code Ann. Section 63-46b-3, shall contain the following:

1. name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;
2. a telephone number where the petitioning party or that party's representative can be reached during regular business hours;
3. petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;
4. particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;
5. if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and
6. in the case of property tax cases, the assessed value sought.

C. Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

DISCUSSION

The taxpayer alleges that the Commission "misapplied the law and facts in determining what constitutes 'Last Known Address' when no current address is known and misapplied the law and facts in what constitutes a 'written appeal' under Utah Admin. Rule R861-1A-22(2)."

Last-Known Address. First, the taxpayer asserts that the Commission erroneously found that the Division sent its Statutory Notices to the taxpayer's "last-known address." The taxpayer asserts that the Commission did not properly apply its prior decisions or federal decisions concerning "last-known address." The taxpayer makes the same arguments that were made at the motion to dismiss hearing. The Commission

considered these decisions and arguments in its Order to Dismiss ruling, finding that they presented different fact situations not present in this case. The Commission is not aware of a prior decision where it found a taxpayer's "last-known address" to be at the location shown on a federal return, if that taxpayer had a different Utah address on other documents.

The taxpayer also contends that there was no record of the taxpayer's Utah address submitted at the hearing. The Commission disagrees. Exhibit 3, which was submitted by the Division at the hearing, shows that the taxpayer was issued a Utah driver's license on May 13, 2005. This document was obtained by the Division on December 13, 2006 and shows the taxpayer's address to be ADDRESS, CITY 1, Utah 84757 ("CITY 1 address"). The Commission found the CITY 1 address to be the taxpayer's last-known address in its Order to Dismiss ruling. The taxpayer did not produce any evidence at the hearing to refute the information shown on Exhibit 3. Accordingly, the Commission made its ruling based on the information that was before it at the hearing.

Now, in Attachment A of his Request, the taxpayer submits additional information to show that on December 6, 2006, the Utah Driver's License Division shows his physical address to be in CITY 2, Utah and his mailing address to be in CITY 3, STATE. However, this same attachment also shows that on May 10, 2007, the taxpayer was issued a Utah driver's license showing his address to be at the CITY 1 address, approximately two months prior to the Division sending its Statutory Notices to this address.¹ Accordingly, even if the Commission were to consider Attachment A as new evidence, it merely confirms that the taxpayer affirmatively declared his address to be at the CITY 1 address before the Statutory Notices were

¹ The taxpayer also submits information to show that he obtained a STATE driver's license with a CITY 3, STATE address on December 6, 2006 (Attachment B of the Request). However, this information does not change the fact that the taxpayer subsequently obtained a Utah driver's license on May 10, 2007, showing his address as the CITY 1 address. As a result, the last address the taxpayer used to obtain a driver's license prior to the Division issuing its Statutory Notices was the CITY 1 address.

Appeal No. 07-1397

mailed. As a result, this new information would not affect the Commission's decision concerning the taxpayer's last-known address.

Written Appeal. The taxpayer also asserts that the Commission erroneously found that the taxpayer did not file a timely appeal within the 30-day appeals period. The 30-day appeals period expired on July 9, 2007. On June 2, 2007, REPRESENTATIVE, the taxpayer's enrolled (X), submitted a Form 2848 Power of Attorney to the Division so that they could discuss the Statutory Notices issued to the taxpayer. After discussing the Statutory Notices with REPRESENTATIVE, the Division sent him a letter dated June 3, 2007. The Division ended the letter with a reminder to REPRESENTATIVE to file a Petition for Redetermination if he or the taxpayer disagreed with the deficiency assessments.

Neither REPRESENTATIVE nor the taxpayer filed a document that contained language expressing a desire to appeal the assessments until August 23, 2007, approximately six weeks after the 30-day appeals period. The taxpayer, however, argues that the Commission should have considered the Power of Attorney, which was written and submitted within the 30-day appeals period, to be a sufficient petition for appeal under Rule 22(B). Specifically, the taxpayer argues that a written Power of Attorney is sufficient because Rule 22(B) provides that "[a] petition for adjudicative action need not be in any particular form, but shall be in writing. . . .

The Commission disagrees. A written document must include language expressing some intent to contest a deficiency assessment before it constitutes an adequate petition for appeal. Although that language need not be in any particular form, it must, nevertheless, clearly show that the appealing party is contesting an assessment or other appealable action. Omission of language expressing such intent is not a mistake of form or content that invokes the provisions of Rule 22(C).² If it did, it is arguable that any

² See *xxxxx v. USTC*, Appeal No. 07-0669 (2007), where the Commission found a document submitted during the appeals period to be an inadequate petition for appeal. The Commission also notes that the Utah Supreme Court found a claim for refund to be inadequate in *Matrix v. Utah State Tax Comm'n*, 52 P.3d 1282

Appeal No. 07-1397

paperwork received during the appeals period would be considered an appeal, even if the taxpayer had no intention to appeal. Accordingly, the Commission finds that submission of a written power of attorney, which does not include some expression of intent to appeal or contest a deficiency, does not constitute an adequate petition for appeal.

DECISION AND ORDER

Based upon the foregoing, it is the decision and order of the Utah State Tax Commission that the taxpayer's Request for Reconsideration is denied. It is so ordered.

DATED this ____ day of _____, 2008.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

NOTICE: You have thirty (30) days after the date of this order to pursue judicial review of this order pursuant to Utah Code Ann. §§59-1-601 et seq. and 63G-4-401 et seq.

KRC/07-1397.rec

(Utah 2002) because the claim did not “advise the Commission of the specific nature of [the] claim.”