

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. 08-0113 Account No. ##### Tax Type: Income Tax Tax Years: 2005 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Attorney
 PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, from Auditing Division

STATEMENT OF THE CASE

On April 28, 2008, Auditing Division (“Division”) filed a Motion to Dismiss this matter on the basis that the taxpayer did not file his Petition for Redetermination within the 30-day statutory appeals period. On July 30, 2008, 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

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 November 20, 2007, the Division issued a Statutory Notice to the taxpayer, in which it imposed additional income tax for the 2005 tax year. The Statutory Notice contained language informing the taxpayer that he had until December 20, 2007 to appeal the assessment. The taxpayer signed his Petition for Redetermination (“Petition”) on December 2, 2007. However, the Petition was not mailed until January 22, 2008, as evidenced by the postmark on the envelope containing the Petition. Because the taxpayer’s Petition was mailed more than 30 days after the issuance of the Statutory Notice, the Division asserts that the Commission no longer has jurisdiction to hear an appeal concerning the assessment. For these reasons, the Division asks the Commission to grant its Motion to Dismiss.

Because of the date on the envelope, the taxpayer does not contest that the Petition was mailed more than 30 days after the issuance of the Statutory Notice. The taxpayer asks the Commission not to dismiss the appeal, however, because the Internal Revenue Service (“IRS”) has recently approved changes to his 2005 federal return that will negate the Division’s state assessment. The taxpayer admits that the IRS has not yet sent documentation of these changes to the taxpayer.

Based on the available evidence, the Commission finds that the taxpayer did not file his Petition for Redetermination within the 30-day appeals period. In accordance with Section 59-10-525, the Commission finds that the assessment is final and that it no longer has jurisdiction to hear an appeal on the matter. For this reason and because the taxpayer can file an amended state return to reflect any IRS changes once the changes are documented, the Commission grants the Division’s motion.

ORDER

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

Appeal No. 08-0113

DATED this _____ day of _____ 2008.

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 _____, 2008.

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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