

09-0569
AUDIT
06-10-2009

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. 09-0569 Account No. ##### Tax Type: Income Tax Tax Year: 2005 Judge: Nielson-Larios
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Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *pro se*
For Respondent: RESPONDENT REP, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Hearing on a Motion to Dismiss on May 7, 2009. In its Motion to Dismiss dated March 3, 2009, Respondent (“Division”) argued that Petitioner (“Taxpayer”) failed to timely file an appeal of the audit deficiencies for the 2005 tax year.

APPLICABLE LAW

State taxable income is defined as federal taxable income with some modifications, subtractions and adjustments. Utah Code Ann. § 59-10-112 (2005).¹

For the purposes of determining state taxable income, federal taxable income means taxable income as defined in Section 63, of the Internal Revenue Code. Utah Code Ann. § 59-10-111(2005).

If a change is made in a taxpayer's net income on his or her federal income tax return, either because the taxpayer has filed an amended return or because of an action by the federal government, the taxpayer must notify the Utah Tax Commission within 90 days after the final determination of such change. The taxpayer

¹ The Individual Income Tax Act was recently revised and sections renumbered. The Commission applies the substantive law that was in effect during the tax years at issue regarding the amount of the tax calculation, and cites the 2005 provisions.

shall file a copy of the amended federal return and an amended state return that conforms to the changes on the federal return. Utah Code Ann. § 59-10-536(5)(a).

“Except in any case where the taxpayer has earlier filed with the commission a petition for redetermination of the deficiency as provided in Title 59, Chapter 1 Part 5, the notice of deficiency shall constitute a final assessment of the deficiency in tax, including interest thereon and any penalties or other additions to tax: (a) upon the expiration of 30 days, or 90 days if the notice is addressed to a person outside of the states of the union and the District of Colombia, after the date of mailing of the notice of deficiency to the taxpayer. . .” Utah Code Ann. § 59-10-525(1).

A taxpayer may file a request for agency action, petitioning the commission for redetermination of a deficiency. Utah Code Ann. § 59-1-501.

A petition for redetermination is deemed to be timely if the petition is “received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if: (a) in the case of mailed or hand-delivered documents: (i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or (ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period . . .” Utah Admin. Code R861-1A-20(2).

Utah Admin. Code R861-1A-22B. states that the contents of a petition must be as follows:

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. § 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.

DISCUSSION

The Division stated that the Statutory Notice of Deficiency (“Notice”) was mailed on June 3, 2008, for the 2005 tax year. This Division further provided that the Notice explained the changes to the 2005 return and the Taxpayer’s appeal rights and that the Appeal Instructions, which were attached to the Notice, instructed the

Taxpayer to file by July 3, 2008. The Division explained that the Taxpayer's petition was received on February 3, 2009, which is the date of the Taxpayer's letter and the postmark on the petition's envelope. The Division explained that, pursuant to Utah Code Ann. § 59-10-525, an audit deficiency becomes the final assessment unless an appeal is filed within thirty days from the date of the Notice.

The Taxpayer explained that the Division changed her 2005 return to disallow an exemption for her intellectually disabled CHILD, (X). She said that the state always allowed the exemption in the past. She said that this is a special exemption for the state return that is not also for the federal return. The Taxpayer explained that she unintentionally missed the filing deadline because of her circumstances. She said that she lost her home; that she is caring for her mother; that she is living in one room of her mother's house; that her children needed her special attention; and that she might be clinically depressed, especially during winter. She explained that when she found her Notice in February 2009, she quickly wrote and filed her appeal. No Tax Commission employee provided her incorrect advice about filing her appeal. Rather, in response to a question, the Taxpayer said that a Tax Commission employee told her that her appeal needed to be in writing.

In this case, there is no question that the Taxpayer's appeal was filed after the July 3, 2008 deadline provided on the Notice. Therefore, this Commission must determine whether this case involves extraordinary circumstances allowing for a late-filed appeal. In general, such extraordinary circumstances involve actions by the Tax Commission that interfered with the taxpayers' due process rights. In this case, there is no evidence that the Tax Commission interfered with the Taxpayer's appeal. Rather, the Taxpayer explained other events, independent of the Tax Commission, that caused her to file after the deadline. While the Taxpayer's situation is unfortunate, the facts of this case do not show extraordinary circumstances that justify the Commission's acceptance of a late filed appeal. The Division provided a proper notice, and it did not cause the Taxpayer to respond after the statutory deadline. Accordingly, this appeal will be dismissed for failure to file a timely appeal.

The Commission notes, however, that certain taxpayers now have an additional remedy when they object to a final assessment. Senate Bill 108 was recently enacted and is currently in effect. S.B. 108 allows certain taxpayers who have not previously filed timely appeals to object to a final assessment by paying the tax and then filing a claim for a refund as provided in the statutes. Utah Code Ann. § 59-1-501(7). The Tax Commission will either grant or deny the claim for a refund. If the Tax Commission denies the claim, then a taxpayer may appeal the denial by filing a petition with the commission within 30 days of the denial. Utah Code Ann. § 59-1-1410(9). Please note, a taxpayer's claim of refund must still meet the general deadline for all claims of refunds, which in these cases will generally be two years from the date of payment. Utah Code

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Ann. § 59-1-1410(8)(a)(ii). Because we have determined that your protest was untimely, this remedy will apply to you. Accordingly, if you pay the tax, you may still pursue your administrative remedies by filing a claim for refund at any time within two years of that payment.

ORDER

The thirty-day requirement for filing an appeal is jurisdictional and the Taxpayers' failure to meet the requirement is cause for dismissal of this appeal. Based upon the foregoing, the Commission dismisses the Taxpayer's appeal in this matter. It is so ordered.

DATED this _____ day of _____, 2009.

Aimee Nielson-Larios
Administrative Law Judge

BY ORDER OF THE COMMISSION.

The undersigned have reviewed this motion and concur in this decision.

DATED this _____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice and Appeal Rights: Failure to pay the balance due as a result of this order within thirty days may result in an additional late payment penalty. You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission pursuant to Utah Code Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.

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