

09-2361  
AUDIT  
TAX YEARS: 2005  
SIGNED: 10-08-09  
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,  Petitioners,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>ORDER GRANTING MOTION TO DISMISS</b>  Appeal No.    09-2361  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 1, Taxpayer  
    For Respondent:   RESPONDENT REP, from Auditing Division

STATEMENT OF THE CASE

On August 27, 2009, Auditing Division (“Division”) filed a Motion to Dismiss this matter on the basis that PETITIONER 1 & PETITIONER 2 (“Petitioners” or “taxpayers”) did not file their Petition for Redetermination within the 30-day statutory appeals period. On October 5, 2009, this matter came before the Commission for a Hearing on Motion.

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

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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 April 9, 2009, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to the taxpayers, in which it imposed additional income tax for the 2005 tax year. The Statutory Notice contained language informing the taxpayers that they had until May 9, 2009 to appeal the assessment. On July 9, 2009, two months after the appeals deadline ended, the taxpayers filed a Petition for Redetermination. Because the July 9, 2009 date on which the Petition for Redetermination was filed is 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.

The taxpayers admit that they did not file their Petition for Redetermination within the 30-day deadline to file an appeal. However, they ask the Commission to deny the Division’s Motion to Dismiss for the following reasons. First, they admit that they received the Statutory Notice, but did not pay attention to it because it looked like “junk mail” to them. Specifically, they assert that a “Payment Express” logo could be seen in the “window” of the envelope that contained the Statutory Notice and that the logo appeared similar to logos often seen in junk mail.

Second, the taxpayers contend that they expected to have an audit interview or division conference before a Statutory Notice was issued. The taxpayers assert that the Division failed to follow the guidelines set forth on the Commission’s website at <http://tax.utah.gov/audits/> and as outlined in USTC Publication 2, Utah Taxpayer Bill of Rights. Specifically, the taxpayers assert that no official “audit interview”

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has taken place and that they remain uninformed as to the reasons why the Division has imposed the assessment. The Commission notes that the above-referenced website and publication provide audit information about “opening conferences,” “division conferences,” and “audit interviews.” For the Division, RESPONDENT REP explained that conferences and audit interviews usually occur during “field audits” for taxes other than individual income tax. RESPONDENT REP further explained that audits concerning individual income tax generally involve an exchange of information by mail, after which a Statutory Notice is issued.

The audit information provided on the above-referenced website and in USTC Publication 2 generally describes the steps involved in an audit of a business where records are examined, usually in regards to sale tax or corporate franchise tax audits. Audit interviews are rarely held to obtain information for individual income tax audits. Furthermore, the Commission notes that an audit review is not required under the Taxpayer Bill of Rights, as set forth in UCA §§59-1-1001 through 59-1-1006. In addition, the Statutory Notice contained a contact number for the taxpayers to call to receive an explanation of the audit. For these reasons, the Commission believes that the Division complied with Utah law in issuing its Statutory Notice.

Furthermore, the taxpayers received the Statutory Notice, which clearly explained the requirement to file a Petition for Redetermination. The Commission does not find it reasonable for the taxpayers to have ignored the Statutory Notice. Accordingly, the Commission finds that the taxpayers were not deprived of due process. For these reasons and in accordance with Section 59-10-525, the Commission finds that it no longer has jurisdiction to hear the appeal.

The Commission notes, however, that certain taxpayers now have an additional remedy when they object to a final assessment. Senate Bill 108 (“S.B. 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. UCA §59-1-501(7). The Tax

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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. UCA §59-1-1410(9). Please note that 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. UCA §59-1-1410(8)(a)(ii). Because the Commission has 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

Based on the foregoing, the Commission grants the Division's Motion to Dismiss.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
Kerry R. Chapman  
Administrative Law Judge

BY ORDER OF THE COMMISSION:

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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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