
BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

TAXPAYER SERVICES DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

ORDER OF DISMISSAL

Appeal No. 09-2732

Account No. #####

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Attorney at Law

For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Taxpayer Services Division
RESPONDENT REP. 3, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Hearing on Motion to Dismiss Respondent's Appeal or Alternatively, for Summary Judgment ("Motion") on May 27, 2010. Petitioner (the "Taxpayer") had filed an appeal on August 27, 2009. On March 17, 2010 Respondent filed its Motion asking that the appeal be dismissed on the basis of failure to state a claim upon which relief could be granted or, in the alternative, that the Division be granted summary judgment on the grounds that the Taxpayer failed to identify or provide any evidence of discrepancies in the sales tax amounts shown as owing.

RELEVANT FACTS

The facts relevant to this decision are not in dispute. On August 27, 2009¹ the Taxpayer filed a Petition for Redetermination Form with the Appeals Unit of the Utah State Tax Commission. On the Form the Taxpayer stated as the basis for the appeal, "Upon further looking at detailed paper work, it seems that there

¹ The date the Taxpayer listed on the form was 9/27/09, but it was stamped as received August 27, 2009 and further the date it was sent in by facsimile was printed on the top of the form indicating August 2009.

are some discrepancies in the amounts paid/unpaid on the quarterly sale tax amounts.” Sent with the form was a Notice of Balance Due letter, which indicated a balance due including tax, penalties and interest of \$\$\$\$ as of August 27, 2009. Additionally attached was a Statement of Account for Delinquent Taxes, dated May 29, 2009, which listed a payment due of \$\$. The periods with balances due were from December 1994 through June 2009.

The amount of tax for each of the filing periods indicated in the notices was based on the returns actually filed by Taxpayer. There was no audit for these periods where an audit deficiency was assessed. At the hearing the representative maintained that the Taxpayer was attempting to file amended returns for some or all of these periods, but had not yet done so.

APPLICABLE LAW

A taxpayer may appeal a deficiency pursuant to Utah Code Sec. 59-1-501 which provides the following:

- (2) A person may file a request for agency action, petitioning the commission for redetermination of a deficiency.
- (3) Subject to Subsections (4) through (6), a person shall file the request for agency action described in Subsection (2): (a) within a 30-day period after the date the commission mails a notice of deficiency to the person in accordance with Section 59-1-1405; or (b) within a 90-day period after the date the commission mails a notice of deficiency to the person in accordance with Section 59-1-1405 . . .

“Deficiency” is specifically defined by statute at Utah Code Sec. 59-1-1402(3) as follows:

“Deficiency” means: (a) the amount by which a tax, fee or charge exceeds the difference between: (i) the sum of: (A) the amount shown as the tax, fee, or charge by a person on the person’s return; and (B) any amount previously assessed, or collected without assessment, as a deficiency; and (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect to that tax, fee, or charge; . . .

The Administrative Procedures Act provides procedures for agency review, but specifically provides that the issuance of a notice of deficiency or other actions on the part of the Tax Commission are not governed by the act. However, appeals to contest the validity of the Tax Commission action are governed by the act. Utah Code Sec. 63G-4-102(2) provides:

This chapter does not govern: . . . (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the

validity or correctness of the action.

DECISION

The Taxpayer argues in this matter that it has a right to an administrative hearing regarding the tax “deficiency” indicated on the balance due notices based on the provision of Utah Code Sec. 63G-4-102(2). The Division argues that under Utah Code Sec. 63G-4-102(2) a taxpayer may commence an action only if they are specifically authorized by law² to do so. It was the Division’s position that there were no statutory provisions that provided the Taxpayer the right to an administrative hearing on an unpaid tax balance that was based on returns filed by the Taxpayer. However, the Division pointed out that the Taxpayer did have the option of filing amended returns if the Taxpayer thought the returns it had filed were in error.

Upon review of the parties’ arguments in this matter, the appeal should be dismissed as what is at issue is not a ‘deficiency’ pursuant to the applicable law. Taxpayers’ rights to contest actions of the Tax Commission are limited to where they are specifically authorized to do so pursuant to the Utah Code. For example taxpayers have the right to file an appeal of a deficiency pursuant to Utah Code Sec. 59-1-501. Taxpayers may appeal a denied refund claim under 59-1-1410. They have the right to a hearing before the Commission revokes their sales tax licenses pursuant to Utah Code Sec. 59-12-106(2)(h). A taxpayer may appeal an assessment made by the Commission under Utah Code Sec. 59-2-1007. However, there is no provision that allows a taxpayer to appeal a balance due that is based on the returns that the taxpayer has filed. A taxpayer does have a clear remedy in this situation. A taxpayer has the option to file amended returns if the taxpayer thinks the original returns filed were in error.

The Taxpayer’s representative has argued that this matter involves a ‘deficiency,’ but it does not come within the statutory definition of ‘deficiency’ or any other provision that would provide the Taxpayer the right to an administrative proceeding. ‘Deficiency’ is specifically defined by statute at Utah Code Sec. 59-1-1402(3) and excluded from ‘deficiency’ is the amount of tax shown by the taxpayer on the taxpayer’s return. Therefore, there is no right to an administrative action either under Utah Code Sec. 59-1-501 or Utah Code Sec. 63G-4-102(2). The appeal should be dismissed. The Taxpayer should be aware that if any of the amended returns would indicate a refund or credit, there is a statute of limitations under Utah Code Sec. 59-1-1410.

2 The Taxpayer argued that the qualifier “authorized by law” in Utah Code Sec. 63G-4-102(2) was a limitation on another person and not the taxpayer. What the section states is “this chapter governs an agency action commenced

Appeal No. 09-2732

Jane Phan
Administrative Law Judge

ORDER

Based on the foregoing, the Division's Motion to Dismiss is hereby granted. This appeal is dismissed.
It is so ordered.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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