

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>ORDER GRANTING MOTION TO DISMISS</p> <p>Appeal No. 09-3419</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Years: 2006</p> <p>Judge: Chapman</p>
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Taxpayer
For Respondent: RESPONDENT REP., from Auditing Division

STATEMENT OF THE CASE

On December 21, 2009, Auditing Division (“Division”) filed a Motion to Dismiss this matter on the basis that PETITIONER (“Petitioner” or “taxpayer”) did not file her Petition for Redetermination within the 30-day statutory appeals period. On April 21, 2010, this matter came before the Commission for a Hearing on Motion.

APPLICABLE LAW

UCA §59-1-501 provides that a taxpayer may file an appeal for a redetermination of a deficiency, as follows in pertinent part:

....

- (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 if the notice of deficiency is addressed to a person outside the United States or the District of Columbia.

.....

(6) For purposes of Subsection (3), a person is considered to have filed a request for agency action:

(a) if the person mails the request for agency action, on the date the person is considered to have mailed the request for agency action in accordance with Section 59-1-1404; or

(b) if the person delivers the request for agency action to the commission by a method other than mail, on the date the commission receives the request for agency action.

(7) A person who has not previously filed a timely request for agency action in accordance with Subsection (3) may object to a final assessment issued by the commission by:

(a) paying the tax, fee, or charge; and

(b) filing a claim for a refund as provided in Section 59-1-1410.

Utah Admin. Rule R861-1A-20 (“Rule 20”) sets forth the timeframes during which an appeal

must be filed, as follows in pertinent part:

.....

(2) . . . , a petition for redetermination of a deficiency must be 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; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

.....

DISCUSSION

On September 16, 2009, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to the taxpayer, in which it imposed additional income tax for the 2006 tax year. The Statutory Notice contained language informing the taxpayer that she had until October 16, 2009 to appeal the assessment. On November 9, 2009, the taxpayer filed a Petition for Redetermination (“Petition”). Because the

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November 9, 2009 date on which the Petition was filed is more than 30 days after the date on which the Statutory Notice was issued, the Division asserts that the Commission no longer has jurisdiction to hear the appeal. For these reasons, the Division asks the Commission to grant its Motion to Dismiss.

The taxpayer does not contest that she filed the Petition more than 30 days after the date the Statutory Notice was issued. However, based on the following circumstances, the taxpayer thought that the date to file the Petition had been extended to November 12, 2009 and that filing the Petition on November 9, 2009 would be timely.

On October 5, 2009, 11 days prior to the October 16, 2009 deadline specified in the Statutory Notice, the taxpayer called the Division in regards to the audit assessment. The taxpayer spoke to EMPLOYEE, a Division auditor. During the conversation, EMPLOYEE informed the taxpayer that she would send her a “Domicile Survey” to complete and return.

The Domicile Survey was mailed to the taxpayer on October 13, 2009. The top of the Domicile Survey included the language: “Response Required By: November 12, 2009. The taxpayer states that she assumed that she had until November 12, 2009 shown on the Domicile Survey to file all submissions, including the Petition. As a result, she completed the survey and included it with the Petition she submitted on November 9, 2009.

The Division points out, however, that EMPLOYEE made a notation of her October 5, 2009 conversation with the taxpayer. In the notation, EMPLOYEE indicated that she told the taxpayer that she would need to “appeal before the letter due date.” EMPLOYEE’s notation did not indicate whether she specifically identified “the letter” to be the Statutory Notice or the Domicile Survey.

The taxpayer received the Division’s Statutory Notice, in which the timeframe to file a Petition for an appeal is clearly explained. The Statutory Notice clearly informed the taxpayer that in order “[t]o protect and pursue your appeal rights, you must file a [Petition] by October 16, 2009.” In addition, the

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Domicile Survey did not include any language informing the taxpayer that the November 12, 2009 “Response Required By” date shown in the Domicile Survey would extend the October 16, 2009 deadline shown in the Statutory Notice. Furthermore, the taxpayer admits that she assumed that the letter to which EMPLOYEE was referring was the one she received after their conversation and that her assumption may have been incorrect. The Commission has found in other cases that a person has not appealed an assessment merely by talking with a Division employee within the 30-day appeals deadline and informing the employee of an intent to appeal. Under the specific circumstances in this matter, it appears that the taxpayer was not deprived of due process. For these reasons, the Commission no longer has jurisdiction to hear the appeal, and the Division’s Motion to Dismiss should be granted.

It is noted, however, that certain taxpayers have an additional remedy when they object to a final assessment. Senate Bill 108 (“S.B. 108”) was enacted in 2009 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 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.

Kerry R. Chapman
Administrative Law Judge

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DECISION AND ORDER

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

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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