

10-0955
INCOME TAX
TAX YEAR: 2006
SIGNED: 03-30-2011

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	ORDER DENYING MOTION TO DISMISS Appeal No. 10-0955 Account No. ##### Tax Type: Income Tax Tax Year: 2006 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., EA
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 Motion to Dismiss on August 26, 2010. In its Motion to Dismiss, dated, May 19, 2010, Respondent (the “Division”) argued that Petitioners (the “Taxpayers”) failed to timely file an appeal of the audit deficiency for the 2006-tax year.

APPLICABLE LAW

“[A] taxpayer may file a request for agency action, petitioning the commission for redetermination of a deficiency.” Utah Code § 59-1-501(2).

“[A] person shall file the request for agency action . . . (a) within a 30-day period after the date the commission mails a notice of deficiency to the person . . . or (b) within a 90-day period after the date the commission mails a notice of deficiency to the person . . . if the notice of deficiency is addressed to a person outside the United States or the District of Columbia.” Utah Code § 59-1-501(3).

To be timely, “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

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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. Rule R861-1A-20(2).

“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 Code § 59-1-501(7) (2009).

DISCUSSION

The Division stated that the Statutory Notice of Audit Change (“Notice”) was issued on February 11, 2010 to the Taxpayers. The Notice indicated that if the Taxpayers disagreed with the audit they had thirty days to file an appeal. The deadline for filing the appeal was March 13, 2010. The Taxpayers did not file an appeal until March 23, 2010, missing the deadline by more than one week. The representative for the Division pointed out that the postmark on the envelope in which the appeal had been mailed was the March 23, 2010 date.

In the Motion the Division pointed out that the 30 deadline was a statutory requirement, citing Utah Code Sec. 63G-4-201 & 59-1-501 as well as Utah Admin. Rule R861-1A-20. It was the Division’s position that failure to meet this deadline was basis for dismissal of the appeal.

The Taxpayers’ representative acknowledged that the appeal had been filed late. However, she explained that PETITIONER 1 had been deployed overseas on active duty for the United States Navy when the Statutory Notice had been issued. Based on this it had taken longer to get the appeal filed. She did provide a copy of his Deployment Orders, but acknowledged they were confusing to try to follow.

The deadline for filing an appeal into the Commission Formal administrative hearing process is set by the Utah Legislature by statute and is a jurisdictional requirement. However, provisions under the Service Members Civil Relief Act provide for a stay of proceedings or statutes of limitations for service members who are active duty and deployed overseas. In this case it was a joint audit based on a joint filing of both Taxpayers. PETITIONER 2, the spouse of the service member, was not in the armed service and could have filed. However, with a joint audit either spouse has the right to file an appeal and it appears that PETITIONER 1’s right to appeal would have been placed on stay until he returned to the U.S. Therefore, this appeal should not be dismissed under these circumstances.

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ORDER

Based upon the foregoing, the Commission denies the Division's Motion to Dismiss the Taxpayer's appeal in this matter. It is so ordered. This appeal will be scheduled for further administrative proceedings.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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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