

12-640
TAX TYPE: INCOME TAX
TAX YEAR: 2008 and 2009
DATE SIGNED: 8-15-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, R. PERO
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 and TAXPAYER-2, Petitioners, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	ORDER DENYING REQUEST TO SET ASIDE ORDER OF DEFAULT Appeal No. 12-640 Account No. ##### Tax Type: Income Tax Tax Year: 2008 ¹ and 2009 Judge: Phan
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STATEMENT OF THE CASE

A Telephone Status Conference was held in this matter on December 17, 2013. Petitioners (“Taxpayers”) failed to appear at the scheduled time and place. An attempt was made to reach the Taxpayers via telephone, but was unsuccessful. An Order of Default was issued on December 23, 2013, dismissing the Taxpayers’ appeal.

On July 17, 2014, the Taxpayers submitted a letter asking the Commission to set aside the default. The Taxpayer states, “We’ve been dealing with the IRS and didn’t think I had to call in.” The Taxpayers provide no explanation as to why the Taxpayers waited nearly seven months before requesting that the Default be set aside.

APPLICABLE LAW

Utah Code §63G-4-209(3) provides, as follows:

- (a) A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure.
- (b) A motion to set aside a default and any subsequent order shall be made to the presiding officer.

¹ The 2008 tax year was previously resolved and it appears the remaining issue in this appeal was the 2009 tax year.

(c) A defaulted party may seek agency review under Section 63G-4-301, or reconsideration under Section 63G-4-302, only on the decision of the presiding officer on the motion to set aside the default.

Utah Admin. Rule R861-1A-26(6)(c)(ii) provides that “[a] defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.”

Utah Rules of Civil Procedure (“URCP”) 55(c) provides that “[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).”

URCP 60(b) provides, as follows in pertinent part:

On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 90 days after the judgment, order, or proceeding was entered or taken. . . .

DISCUSSION

An Order of Default was issued to the Taxpayers on December 23, 2013. Although the Order of Default informed the Taxpayers that they could submit a request to set the default aside, the Taxpayers did not do so until July 17, 2014, nearly seven months after the Order of Default was issued.

Under URCP(60)(b), a request to set aside an Order of Default must be “made within a reasonable time and for reasons (1), (2), or (3), not more than 90 days after the . . . order . . . was entered.” The Commission believes that the taxpayer is asking for the Order of Default to be set aside for a “mistake,” or “inadvertence,” which are found in reason (1). For reason (1), a request must be made within 90 days of the date on which an Order of Default was issued. The Taxpayers have provided no explanation of the delay in submitting the request. The Taxpayers’ request was not made within 90 days of the Order of Default in this matter. Accordingly, the Commission denies the Taxpayer’s request to set the default aside.

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Although the Commission is not reopening this appeal, it notes that should the Internal Revenue Service make changes affecting the Taxpayers' 2009 federal adjusted gross income, the Taxpayers may have the right to file an amended Utah return at that time or may contact Auditing Division to see that the state liability is resolved consistent with the federal changes.

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayers' request to set aside the December 23, 2013 Order of Default. It is so ordered.

DATED this _____ day of _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner