

13-1795
TAX TYPE: INCOME TAX
TAX YEARS: 2004 and 2005
DATE SIGNED: 11-6-2014
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, vs. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>ORDER OF DISMISSAL</p> <p>Appeal No. 13-1795 Account No. ##### Tax Type: Income Tax Tax Years: 2004 and 2005 Judge: Phan</p>
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STATEMENT OF THE CASE

On August 2, 2013, Petitioner (“Taxpayer”) filed a Petition for Redetermination (TC-738) in response to the letter issued by a Compliance Agent in the Taxpayer Services Division, dated July 3, 2013, informing the Taxpayer that her “request for Innocent Spouse relief has been denied . . .” There is no statement in the Denial letter that indicates the decision is appealable to the Utah State Tax Commission. It has not been the Tax Commission policy to review these denial decisions in its administrative hearing process. In its response to the Petition, the Division asked that the Petition be dismissed for lack of jurisdiction or cause of action, and, in the alternative, that the Denial issued by Respondent (“Division”) be affirmed.

After a Telephone Status Conference on January 7, 2014, at which NAME-1, Attorney at Law, was present for the Taxpayer and NAME-2, Assistant Attorney General, and NAME-3 were present for the Division, it was determined that the Initial Hearing decision be issued in this matter based on the written submission of the parties. The Division’s Response to Petition For Redetermination was

submitted on January 17, 2014. Petitioner's Brief and Response to Respondent's Answer was submitted on February 28, 2014. Respondent's Prehearing Brief was submitted on April 2, 2014.

APPLICABLE LAW

Utah Code Ann. §59-1-501 provides that a taxpayer may file a petition 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.

Deficiency is defined at Utah Code Sec. 59-1-1402(3) as follows:

- (3) "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; or
 - (b) if a person does not show an amount as a tax, fee, or charge on the person's return, or if a person does not make a return, the amount by which the tax, fee, or charge exceeds:
 - (i) the 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.

Utah law provides that a deficiency becomes an assessment if it is not appealed within the thirty day period at Utah Code 59-1-503(2) as follows:

If the taxpayer does not file a petition with the commission within the time prescribed for filing the petition, the deficiency, notice of which has been sent to the taxpayer, shall be assessed, and shall be paid within 30 days from the date the notice and demand is sent from the commission.

DISCUSSION

Although the parties discussed in their written submissions primarily the underlying merits of whether the Division's Denial to grant Innocent Spouse relief was appropriate, the Commission must first determine whether or not it has jurisdiction to hear the Taxpayer's appeal of the Division's denial of

Innocent Spouse relief. Utah Code gives the Utah State Tax Commission express authority for certain agency review and appeal processes, for example under Utah Code 59-1-501(2) a taxpayer may petition for redetermination of a deficiency. Another example is under Utah Code 59-1-401(13), which provides that the Commission may waive or compromise penalties or interest.¹ The Taxpayer's appeal is not a waiver request under Utah Code 59-1-401(13). Further, it is not a petition of a deficiency. Utah Code §59-1-501(2) provides that taxpayers may file a petition regarding a deficiency if the appeal is filed within thirty days of the notice of deficiency. However, pursuant to the provisions of Utah Code 59-1-1402(3), deficiency does not include the tax amount reported by a taxpayer on a return filed by the taxpayer or an amount previously assessed. From the facts provided by the parties it is clear the tax amount at issue was an amount previously assessed. As noted in the Petitioner's Brief and Response to Respondent's Answer,² at some point after 2009 but prior to 2012, an audit had been issued and tax assessed against the Taxpayer. She has no further rights to appeal the audit deficiency under Utah Code Sec. 59-1-501. There is not a new deficiency assessed against the Taxpayer that is appealable.

As noted by the Division in its written submissions in this matter there is no provision in Utah law for innocent spouse relief. There is no express provision that allows this relief to be granted and no provision that gives the Taxpayer the right to appeal if denied to the Utah State Tax Commission. It has not been the Tax Commission's policy or procedure to hear appeals of the Division's denial of innocent spouse relief. This is noted by the Commission in its *Order of Dismissal, Appeal No. 12-2778*, (April 2013) (available at tax.utah.gov/commission-office/decisions), in which the Commission dismissed an appeal for which the basis was an innocent spouse relief request.

In fact the parties cite only one decision from a Tax Commission administrative appeal regarding innocent spouse relief, *Findings of Fact, Conclusions of Law and Final Decision, Appeal 89-1070*. *Appeal 89-1070* had been issued in August 1990. The recitation of the facts in that decision are extremely limited. However, it does not appear to be an appeal of a denial by the Taxpayer Services Division of Innocent Spouse relief, because the Respondent in that appeal is the Auditing Division. In that appeal it is noted "Petitioner requests that the Tax Commission relieve Petitioner of the additional taxes assessed

¹ In the Property Tax Act there are express provisions providing the Commission jurisdiction for certain types of review at Utah Code Sec. 59-2-1005, 59-2-1006 and 59-2-1007. Denials of refund requests are also expressly appealable to the Utah State Tax Commission at Utah Code Sec. 59-1-1410(9).

² Petitioner's Brief and Response to Respondent's Answer, pg. 2.

because of [spouse's] unreported income based upon a federal tax provision which allows this under what is known as the "Innocent Spouse Doctrine." It appears that the taxpayer had appealed an audit deficiency then raised innocent spouse as an argument in the audit appeal.³ Audit deficiencies are clearly appealable under Utah Code Sec. 59-1-501.

The Taxpayer's appeal of the Denial of Innocent Spouse Relief should be dismissed.⁴

Jane Phan
Administrative Law Judge

ORDER

Based on the foregoing, the Taxpayer's appeal is hereby dismissed. It is so ordered.

DATED this _____ day of _____, 2014.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

³ Taxpayers occasionally argue innocent spouse relief during the course of a timely filed audit deficiency appeal. See Findings of Fact, Conclusion of Law, Final Decision Appeal No. 13-1572 (2014). This is different procedurally from the subject appeal because in the subject the Taxpayer did not have a timely appeal open on an audit deficiency.

⁴ It is unclear whether this would be applicable because it was unknown whether the Taxpayer's spouse had filed an appeal of the Utah audit, and further whether there was factual or legal basis to claim the audit was in error. However, Utah Code §59-1-501(7) allows 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. See Utah Code §59-1-1410(9). A taxpayer's claim for refund must still meet the general deadline for all claims of refunds. See Utah Code §59-1-1410(8)(a)(ii).

Appeal No. 13-1795

Notice of Appeal Rights: If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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 Ann. §59-1-601 et seq. and §63G-4-401 et seq.