

15-2067

TAX TYPE: SALES & USE TAX

TAX YEAR: 01/01/10 – 12/31/12

DATE SIGNED: 12/9/2016

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>ORDER ON RESPONDENT’S MOTION TO DISMISS</p> <p>Appeal No. 15-2067</p> <p>Account No. #####</p> <p>Tax Type: Sales & Use Tax</p> <p>Audit Period: 01/01/10 – 12/31/12</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Representative
REPRESENTATIVE-2 FOR TAXPAYER, Representative
REPRESENTATIVE-3 FOR TAXPAYER, Representative
REPRESENTATIVE-4 FOR TAXPAYER, Representative

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT-1, Division Director, Auditing Division
RESPONDENT-2, Deputy Director, Auditing Division
RESPONDENT-3, Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 20, 2016 for a Hearing on Respondent’s (“Division”) Motion to Dismiss. The Division based its Motion to Dismiss on the contention that Petitioner’s (“Taxpayer”) Petition for Redetermination was filed late, and in the alternative, argued that there were errors with the Petition and it should be dismissed on that basis.

APPLICABLE LAW

Utah Code Ann. §59-1-501 provides that a taxpayer must file a petition for a redetermination of a deficiency within thirty days of the issuance of a notice of 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...

Filing within the thirty-day deadline is governed by Rule R861-1A-20 of the Utah Administrative Rules, as follows in pertinent part:

- (2) Except as provided in Subsection (3), a petition for redetermination 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.

Further guidance on the filing deadline is provided in Rule R861-1A-22 of the Utah Administrative Rules, as follows in relevant part:

- (1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.
- (2) Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:
 - (a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;
 - (b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;
 - (c) petitioner's tax identification, social security number or other relevant identification number;
 - (d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;
 - (e) If the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and
 - (f) In the case of property tax cases, the assessed value sought.
- (3) Effect of Nonconformance. The commission will not reject a Petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

Utah Code Sec. 63G-4-201(3)(a) provides in relevant part:

Where the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings, that person's request for agency action shall be in writing and signed by the person invoking the jurisdiction of the agency, or by that person's representative, and shall include:

- (i) The names and addresses of all persons to whom a copy of the request for agency action is being sent;
- (ii) The agency's file number or other reference number, if known;
- (iii) The date that the request for agency action was mailed;
- (iv) A statement of the legal authority and jurisdiction under which agency action is requested.
- (v) A statement of the relief or action sought from the agency; and
- (vi) A statement of the facts and reasons forming the basis for relief or agency action.

DISCUSSION

At the Hearing on Motion to Dismiss, the facts indicated that the representatives for the Taxpayer had placed into the mail a Petition for Redetermination addressed to the Auditing Division of the Utah State Tax Commission on November 30, 2015, and therefore the Petition was mailed within the thirty-days. However, the petition did not contain the correct account number or a copy of the Statutory Notice, which did make it look like this appeal was late. The Division had issued a Statutory Notice-Sales and Use Tax on November 3, 2015. This had been mailed to the Taxpayer at the Taxpayer's address of record. The Notice listed the Account No. 11625999-015-STC and explained what the Taxpayer needed to do in order to file an appeal if the Taxpayer disagreed with the audit as follows (with emphasis added):

If you do not agree with the audit adjustments, you may appeal directly to the Tax Commission. To protect your appeal rights, you must file a Petition for Redetermination, TC-738, by December 3, 2015. This form is available from our website at tax.utah.gov/forms.

The purpose of the petition is to submit in writing the area(s) of disagreement you have with the audit and the relief you are seeking. ***Attach a copy of this Statutory Notice letter*** to your Petition for Redetermination and return both to:

Appeals Unit¹
Utah State Tax Commission

¹ Petition for Redetermination Form TC-738 also instructs taxpayers to mail the form to the "Tax Appeals Unit."

210 North 1950 West
Salt Lake City UT 84134-6200

The representatives for the Taxpayer filled out a Petition for Redetermination–TC738 and prepared a letter explaining issues with the audit. Both were dated November 30, 2015, and both listed the account number as 11625999-**009**. The letter indicated it was being mailed certified with return receipt requested and the certified tracking number was written on the letter. There were a number of attachments with the letter and the letter stated that the Statutory Notice was enclosed as Exhibit II. The letter indicating it was being mailed (emphasis added) as:

Auditing Division
Utah State Tax Commission
Taxpayer Services Division
210 North 1950 West
Salt Lake City, Utah 84134

The representatives for the Taxpayer provided the United States Postal Service Tracking Record. This tracking record shows a document with the same tracking number that was received at the Post Office on November 30, 2015 and delivered on December 8, 2015. The letter was received by the Auditing Division on December 8, 2015, based on a stamp “Received by Auditing Division” as of that date. The appeal or most of the appeal was eventually forwarded to the Appeals Unit and there is a stamp “Received December 28, 2015 Appeals Unit” on the copy in the Appeal Unit’s file. Because the Appeals Unit staff is used to handling time sensitive documents, if this had been received in the mailing envelope or with the envelope, it is the Appeal Unit’s procedure that the envelope would have been retained in the physical file as well as scanned into the electronic file. There is no envelope included with this file. In addition, although there was a cover sheet indicating “Exhibit II” there was no Statutory Notice attached with the appeal documents. Not having a Statutory Notice, Appeals Unit staff obtained a copy from the Tax Commission’s computer system using the account number provided by the Taxpayer, which contained the wrong suffix. This led to a Statutory Notice issued to Taxpayer on April 30, 2014. So the November 30, 2015 appeal would have been more than one year late from when that Notice was issued.

As the Taxpayer was able to show that it had mailed the appeal on November 30, 2015 and that it was within the thirty day deadline for the Statutory Notice the Taxpayer was intending to appeal, which was the one issued on November 2, 2015, it would be appropriate to consider this a timely filed appeal. The Division, however, points out that there were several errors on the part of the Taxpayer with the appeal filing and asks the Commission for guidance as to whether the appeal should be dismissed on this

basis. The Taxpayer had not addressed the appeal to the Appeals Unit as instructed. The Appeals Unit has procedures in place for handling time sensitive materials and can process the appeals more efficiently if they receive them directly instead of through another Division. The Taxpayer listed the incorrect suffix on the account which led to further confusion. The Division maintains that the Taxpayer did not include a copy of the Statutory Notice with the appeal, although the Taxpayer states that it was included. Based on Utah Code Subsection 63G-4-201(3) and Utah Admin. Rule R861-1A-22, this was a nonconforming appeal filing. Under Utah Admin. Rule R861-1A-22(3) before dismissing the appeal for these nonconforming appeal issues, the Commission would first have had to give the Taxpayer notice and the opportunity to amend or submit a substitute Petition. At this point, the correct information has been submitted by the Taxpayer, so the nonconforming issues have been corrected. Therefore, the appeal is now in compliance and should proceed.

Jane Phan
Administrative Law Judge

ORDER

Based on the foregoing, the Division's Motion to Dismiss is hereby denied. The matter will be scheduled for a Telephone Status Conference to schedule further events with the parties. It is so ordered.

DATED this _____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner