

16-323
TAX TYPE: INCOME TAX
TAX YEAR: 2013
DATE SIGNED: 8-23-2016
COMMISSIONERS: J. VALENTINE, M. CRAGUM, R. ROCKWELL
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

| | |
|---|--|
| <p>TAXPAYER-1 & TAXPAYER-2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p> | <p>ORDER ON RESPONDENT'S MOTION TO DISMISS</p> <p>Appeal No. 16-323</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2013</p> <p>Judge: Phan</p> |
|---|--|

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1
For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on June 13, 2016 for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division based its Motion to Dismiss on the contention that Petitioners ("Taxpayers") did not file their Petition for Redetermination (appeal) within the statutory time period.

APPLICABLE LAW

Utah Code §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 requirements are provided by Rule R861-1A-22 of the Utah Administrative Rules, as follows in pertinent part:

(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 issue involved . . . ;
- (e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the origination division or officer;

...

(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 the notice of the defect from the commission.

DISCUSSION

The Division issued a Notice of Deficiency to the Taxpayers on January 9, 2016. Taxpayers do not contend the notice was sent to the wrong address. The notice explained the appeals procedures and instructed that if the Taxpayers disagreed with the audit, they would need to file a Petition for Redetermination Form TC-738 by February 18, 2016. The Division maintains that the Taxpayers' Petition for Redetermination was not received by the Commission until March 8, 2016. The Division's representative asked the Commission to dismiss the Taxpayers' appeal because it was not received within the 30 day time period set by Utah Code Sec. 59-1-501.

The Taxpayer stated that although he had not filed a Form TC-738 by the deadline, he had corresponded with the Division's auditor, NAME-1, by email prior to the February 18, 2016 deadline. On January 26, 2016 there were several emails between the Taxpayer, the Taxpayers' accountant and the Division's auditor. The Taxpayer had stated he had moved from Utah to STATE-1 and then to FOREIGN COUNTRY and this was intended to be a permanent move. He had apparently returned to Utah during 2013 and the Division's auditor had responded by email indicating that NAME-1 had explained the possibility of the Taxpayers filing an amended return. The Taxpayer stated based on this correspondence with the auditor, he thought he was already in the appeals process. The Taxpayers prepared an amended return which they sent in with a cover letter post marked March 7, 2016, explaining the change and that they had previously been in contact with the auditor. This letter was treated as a

Petition for Redetermination and caused the appeal to be opened.

The 30-day deadline to file an appeal is set out at Utah Code Ann. §59-1-501. This language is not discretionary. However, the correspondence between the Taxpayer and auditor that occurred on January 26, 2016, appears to be sufficient to indicate the Taxpayers were appealing the audit and should be accepted as a timely appeal. This correspondence did occur within the 30-day deadline. Under Utah Admin. Rule R861-1A-22(3), “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” Had the emails been forwarded to the Appeals Unit, they would have been sufficient to open an appeal, although the Appeals Unit may have given the Taxpayers notice of nonconformance in content as required under Utah Admin. Rule R861-1A-22(3), which would then have given the Taxpayers notice they needed to file an amended petition within 15 days. The Division’s Motion to Dismiss should be denied.

Jane Phan
Administrative Law Judge

ORDER

The Division’s Motion to Dismiss is hereby denied. This appeal will remain open and the matter scheduled for further proceedings. 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

Notice of Appeal Rights and Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied. 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

Appeal No. 16-323

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.