

16-1445
TAX TYPE: INCOME TAX
TAX YEAR: 2011
DATE SIGNED: 12-14-2016
COMMISSIONERS: J. VALENTINE, M. CRAGN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	ORDER ON RESPONDENT'S MOTION TO DISMISS Appeal No. 16-1445 Account No. ##### Tax Type: Income Tax Tax Year: 2011 Judge: Nielson-Larios
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Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, by telephone
For Respondent: RESPONDENT, Auditing Division, in person

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 29, 2016, for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division bases its Motion to Dismiss on the contention that Petitioner's ("Taxpayer") Petition for Redetermination was not timely filed.

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...

Utah Code Ann. § 59-1-1405(1) states:

Except as provided in Subsection (3) or (5), the commission shall mail a notice of deficiency to a person in accordance with Section 59-1-1404 if the commission finds there is:

- (a) a deficiency in a tax, fee, or charge imposed; or
- (b) an increase or decrease in a deficiency.

Utah Code Ann. § 59-1-1404(4) states:

Subject to Subsection (5), if the commission is required to mail a notice to a person under this part, the commission shall mail the notice to the person at the person's last-known address as shown on the records of the commission.

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

- (2) Except as provided in Subsection (3), 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 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 Utah Administrative Code R861-1A-22, 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.

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DISCUSSION

The Division issued a Notice of Deficiency to the Taxpayer on August 22, 2016. The Taxpayer does not contend the Notice of Deficiency was sent to the wrong address. The Notice of Deficiency explains the appeals procedures, and instructs the Taxpayer that if he disagrees with the audit, he must file a petition within 30 days of the date of the Notice of Deficiency. The Division maintains that the Taxpayer's Petition for Redetermination was not received by the Commission until September 22, 2016, which is the date the Petition for Redetermination was emailed to the Appeals Unit and the date the Appeals Unit stamped it as received. September 22, 2016, is one day after the 30-day period for filing a

timely appeal. The Division's representative asks the Commission to dismiss the Taxpayer's appeal because the Petition for Redetermination was not received within the 30-day time period.

The Taxpayer did not dispute the facts presented by the Division. He explained that he received the Notice of Deficiency by mail on September 19, 2016. He explained he did not have time to review the Notice of Deficiency until September 22, 2016, at which time he learned he was one day late. September 22, 2016, is a Thursday. The Taxpayer explained that he was not aware he was being audited by the Utah State Tax Commission until he received the Notice of Deficiency. He explained that he moved from Utah in early 2011 and inadvertently did not file a Utah income tax return for that tax year. He explained that he questions the correctness of the estimated income tax calculated by the Division and he is in the process of preparing a 2011 Utah income tax return.

The Division explained that the Taxpayer may still file a 2011 Utah income tax return. The Division explained that if the Taxpayer files that return, the Division will review it and compare it with the Taxpayer's federal information. The Division explained that based on its review, the Division may accept the return to replace the Division's 2011 estimate.

The thirty-day requirement for filing an appeal is set by statute and is a jurisdictional requirement. The Notice of Deficiency was issued by the Division on August 22, 2016. No one presented evidence that the Notice of Deficiency was not mailed on August 22, 2016. The Taxpayer's Petition for Redetermination was received by the Commission through email on September 22, 2016. This is one day beyond the 30-day deadline provided in Utah Code Ann. § 59-1-501. Utah Administrative Code R861-1A-20 provides that a petition for redetermination must be received in the commission offices, or postmarked, no later than 30 days from the date of the Notice of Deficiency. This language is not discretionary; the Tax Commission does not have statutory authority to waive or extend the 30-day filing period for "good cause."¹ Thus, the appeal should be dismissed absent extraordinary circumstances that interfered with the Taxpayer's due process rights. In general, such extraordinary circumstances involve actions by the Tax Commission that interfered with a taxpayer's due process rights.

In this case, there is no evidence that such extraordinary circumstances exist, and the appeal should be dismissed. The Division mailed the Notice of Deficiency to the Taxpayer's last-known address as required by § 59-1-1404(4). No actions by the Tax Commission interfered with the Taxpayer's receipt of that Notice of Deficiency.

¹ In Appeal 08-0714, available through the tax.utah.gov website, the Commission explains how it lacks statutory authority to extend the 30-day period for good cause.

Although this appeal is dismissed, the Taxpayer may challenge the audit result by filing a 2011 Utah income tax return. The Division will then review that return, and if the Division agrees with it, the Division will accept it and make any corresponding adjustments to the Taxpayer's Utah liabilities.

Additionally, there might be another remedy available to the Taxpayer. Utah Code Ann. § 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. The Tax Commission will either grant or deny the claim for a refund. If the Tax Commission denies the claim, then a taxpayer may appeal the denial by filing a petition with the commission within 30 days of the denial. *See* Utah Code Ann. § 59-1-1410(9). A taxpayer's claim of refund must still meet the general deadline for all claims of refunds, which is generally two years from the date of payment. *See* Utah Code Ann. § 59-1-1410(8)(a)(ii). The Taxpayer's Petition for Redetermination was untimely; therefore, this remedy may be available to the Taxpayer. Accordingly, if the tax is paid, the Taxpayer may still pursue administrative remedies by filing a claim for refund at any time within two years of that payment.

The Notice of Deficiency reflects an amount owing. The Taxpayer may contact the Taxpayer Services Division at (801)297-7703 to make payment arrangements.

Aimee Nielson-Larios
Administrative Law Judge

ORDER

The thirty-day requirement for filing an appeal is set by statute and is a jurisdictional requirement. Because the Taxpayer did not file a Petition for Redetermination within the thirty days provided by Utah law, the Commission hereby dismisses the Taxpayer's appeal. 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 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.