

17-17

TAX TYPE: WAIVER REQUEST / PENALTIES

TAX YEAR: 2015

DATE SIGNED: 3/31/2017

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| TAXPAYER, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent. | ORDER GRANTING RESPONDENT'S MOTION TO DISMISS Appeal No. 17-17 Account No. ##### Tax Type: Waiver Request / Penalties Tax Year: 2015 Judge: Chapman |
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Member of TAXPAYER (by telephone)
 REPRESENTATIVE-2 FOR TAXPAYER, Accountant (by telephone)
For Respondent: RESPONDENT, from Taxpayer Services Division

STATEMENT OF THE CASE

On January 25, 2017, Taxpayer Services Division (“Division”) filed a Motion to Dismiss this appeal on the basis that TAXPAYER (“Petitioner” or “taxpayer”) did not file its appeal within 30 days of the date that the Division issued its decision concerning the taxpayer’s waiver request. On March 23, 2017, this matter came before the Commission for a Hearing on Motion.

APPLICABLE LAW

1. Utah Code Ann. §59-1-401(14) provides that “[u]pon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.”

2. Utah Admin. Rule R861-1A-42(1) (“Rule 42”) provides that a taxpayer may request a waiver of penalties and/or interest and that the taxpayer may appeal a denial of a request for waiver of penalties and/or interest, as follows in pertinent part:

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

- (i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;
- (ii) the total tax owed for the period has been paid;
- (iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;
- (iv) the taxpayer has not previously received a waiver review for the same period; and
- (v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

....

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.

3. Utah Code Ann. §63G-4-201(4) provides that “[w]hen initial agency determinations or actions are not governed by this chapter, but agency and judicial review of those initial determinations or actions are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules.”

4. Utah Admin. Rule R861-1A-22(1) (“Rule 22”) provides that “[u]nless 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.”

5. Utah Admin. Rule R861-1A-20 (“Rule 20”) discusses the periods within which an appeal may be requested for several types of appeals, as follows in pertinent part:

(1) A request for a hearing to correct a centrally assessed property tax assessment . . . is

deemed to be timely if:

- (a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or
- (b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

....

(2) . . . , 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;
- (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.

....

(3) A petition for redetermination of a claim for refund filed in accordance with [Section] 59-1-1410 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 time frame provided by statute; 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 time frame provided by statute; or
- (b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

....

(4) (a) An appeal of an action taken by the Motor Vehicle Division under Title 41, Chapter 1a, or the Motor Vehicle Enforcement Division under Title 41, Chapter 3, must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal.

- (b) An appeal under Subsection (4)(a) is deemed to be timely if:
 - (i) in the case of mailed or hand-delivered documents:
 - (A) the petition is received in the commission offices on or before the close of business of the last day of the 30-day time period; or
 - (B) 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 time period; or
 - (ii) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day time period.

....

6. For the instant matter, UCA §59-1-1417(1) provides guidance concerning which party has the burden of proof, as follows:

(1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

- (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
- (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
- (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
 - (i) required to be reported; and
 - (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

Pursuant to Subsection 59-1-1417(1), the taxpayer has the burden of proof in this matter. Either on or prior to August 15, 2016, the taxpayer asked the Division to waive penalties that had been imposed on its withholding account for the 2015 tax year. On August 15, 2016, the Division issued its Waiver Decision, in which it waived \$\$\$\$\$ of the penalties for which the taxpayer had requested a waiver, but denied its request to waive the remaining \$\$\$\$\$ of penalties.¹ In the Division's Waiver Decision, the taxpayer was given appeal rights and informed that if it did not appeal the Division's decision by September 14, 2016, "this decision is final." The taxpayer appealed the Division's Waiver Decision in a letter dated November 9, 2016, which it mailed to the Tax Commission in an envelope that was postmarked November 10, 2016.

The Division contends that "pursuant to law and rules of the Commission,"² the taxpayer may not appeal the Waiver Decision unless the taxpayer submitted its appeal by September 14, 2016 (i.e., within 30 days of the date that the Waiver Decision was issued). Because the taxpayer did not file its appeal on or before this September 14, 2016 date, the Division contends that the Commission no longer has jurisdiction to hear the

1 No evidence was submitted to suggest that the Waiver Decision was mailed on a date other than August 15, 2016.

2 The Division did not specify which specific laws or rules would support its position.

taxpayer's appeal. As a result, the Division asks the Commission to grant its Motion to Dismiss.

The taxpayer does not contend that it filed its appeal within 30 days of the August 15, 2016 date that the Division issued its Waiver Decision. In addition, the taxpayer does not contend that Utah law provides that a taxpayer has more than 30 days to appeal a denial of a waiver request. The taxpayer, however, asks the Commission to deny the Division's Motion and to allow its appeal to go forward because its internal bookkeeper (who it has now "changed") had been filing the taxpayer's returns and other documents late and because it believes that reasonable cause exists to waive the remaining \$\$\$\$\$ of penalties.³

Rule 42(1)(d) provides that a taxpayer may appeal a denial of a waiver request by following the procedures found in Title 63G, Chapter 4 of the Utah Code⁴ and Tax Commission rules. Subsection 63G-4-201(4) provides that when a taxpayer appeals an action (such as the Division's Waiver Decision), the taxpayer must file its appeal of that action within the time prescribed by the agency's rules (in this case the Tax Commission's rules). Rule 22(1) is a Tax Commission rule that discusses a 30-day appeals period, but also provides that "[u]nless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20."

No statute provides that the period to appeal the denial of a waiver request is other than 30 days. In addition, Rule 20 does not specifically address an appeal of the denial of a waiver request. However, for the types of appeals that are specifically addressed in Rule 20, that rule provides for a 30-day appeals period unless otherwise provided by statute. When this rule is considered in concert with Subsection 63G-4-201(4) and Rule 22(1), the Commission finds that the Division's Waiver Decision correctly informed the taxpayer that it had 30 days to appeal the Division's action concerning the taxpayer's waiver request. Because the taxpayer did not file its appeal within this 30-day appeals period, the taxpayer's appeal is untimely.

3 As of the hearing date, the \$\$\$\$\$ of penalties that the Division did not waive has been paid.

4 This chapter of the Utah Code is also known as the Utah Administrative Procedures Act ("UAPA").

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As a result, the Commission no longer has jurisdiction to hear the taxpayer's appeal of the Waiver Decision, unless the taxpayer shows that its appeal was filed late because of some Tax Commission action that deprived the taxpayer of its due process. The taxpayer has not shown that the Tax Commission deprived it of its due process. Even though the taxpayer may have experienced personnel issues and believes that the Division's Waiver Decision is incorrect, these circumstances do not warrant an extension or waiver of the 30-day appeals period. The Division's Waiver Decision became final before the taxpayer filed its appeal. Accordingly, the Commission should grant the Division's Motion to Dismiss and close the appeal.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission grants the Division's Motion to Dismiss and closes this appeal. It is so ordered.

DATED this _____ day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. 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

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Ann. §59-1-601 et seq. and 63G-4-401 et seq.