

17-739
TAX TYPE: INCOME TAX
TAX YEAR: 2003 & 2004
DATE SIGNED: 05/30/2017
COMMISSIONERS: M CRAGUN, R PERO, R ROCKWELL
EXCUSED: J VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	ORDER DENYING REQUEST FOR DECLARATORY ORDER Appeal No. 17-739 Account No. ##### Tax Type: Income Tax Tax Years: 2003 and 2004 Judge: Phan
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STATEMENT OF THE CASE

On February 7, 2017,¹ Petitioners (“Taxpayers”) filed a Petition–Request for Agency Action requesting a declaratory order pursuant to Utah Code Secs. 63G-4-201(1)(b) and 63G-4-503(1). In the Request, the Taxpayers ask that the Utah State Tax Commission “declare invalid certain tax liens filed in COUNTY-1 in connection with income tax assessments made in Utah under Title 59 Chapter 10 Part 14 of Utah Code Annotated.” The Taxpayers assert that the Utah State Tax Commission has authority to issue a declaratory order pursuant to Utah Code Sec. 63G-4-503.

APPLICABLE LAW

Utah Code §63G-4-503 provides as follows in pertinent part:

- (1) Any person may file a request for agency action, requesting that the agency issue a declaratory order determining the applicability of a statute, rule or order within the primary jurisdiction of the agency to specified circumstances.
- (2) Each agency shall issue rules that:
 - (a) provide for the form, contents, and filing of petitions for declaratory orders;
 - (b) provide for the disposition of the petitions;
 - (c) define the classes of circumstances in which the agency will not issue a declaratory order;

¹ This Request was stamped as received by the Utah State Tax Commission Hurricane Office on February 7, 2017. It was not received at the Utah State Tax Commission Appeals Unit until March 15, 2017.

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(6)(a) After receipt of a petition for a declaratory order, the agency may issue a written order: (i) declaring the applicability of the statute, rule, or order in question to the specified circumstances; (ii) setting the matter for adjudicative proceedings; (iii) agreeing to issue a declaratory order within a specified time; or (iv) declining to issue a declaratory order and stating the reasons for its action.

For purposes of determining which classes of circumstances for which the Tax Commission will not issue a declaratory order, the Tax Commission has adopted Utah Admin. Rule R861-1A-31(3) as follows:

The Commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

ORDER

The Taxpayers are asking that the Tax Commission issue a declaratory order regarding collection actions including invalidating tax liens. Under Utah Code Sec. 63G-4-503(2)(c), the Tax Commission is to issue rules which define the classes of circumstances in which the agency will not issue a declaratory order. The Tax Commission has done so in Utah Admin. Rule R861-1A-31(3) and this specifically includes collection actions, which is the action at issue in this request. On this basis, the Commission declines to issue a declaratory order and denies the Taxpayers' request. 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: 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

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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.