

19-1300  
TAX TYPE: INCOME TAX  
TAX YEAR: 2014  
DATE SIGNED: 11/27/2019  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, L. WALTERS  
EXCUSED: R. ROCKWELL  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYER-1 &amp; TAXPAYER-2,  Petitioners,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>ORDER ON RESPONDENT'S MOTION TO DISMISS</b></p> <p>Appeal No. 19-1300</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2014</p> <p>Judge: Phan</p>
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYERS', CPA  
For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on DATE, 2019 for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division had filed its Motion to Dismiss asserting that Petitioners ("Taxpayers") had failed to file the Petition for Redetermination, or appeal, of the Utah audit deficiency at issue, within the statutory time period set out at Utah Code §59-1-501.

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, or

- (b) within a 90-day period after the date the commission mails a notice of deficiency to the person in accordance with Section 59-1-1405, if the notice of deficiency is addressed to a person outside the United States or the District of Columbia.
- (4) If the last day of a time period described in Subsection (3) is a Saturday, Sunday, or legal holiday, the last day for a person to file a request for agency action is the next day that is not a Saturday, Sunday, or legal holiday.
- (5) A person that mails a request for agency action shall mail the request for agency action in accordance with Section 59-1-1404.
- (6) For purposes of Subsection (3), a person is considered to have filed a request for agency action:
  - (a) if the person mails the request for agency action, on the date the person is considered to have mailed the request for agency action in accordance with Section 59-1-1404; or
  - (b) if the person delivers the request for agency action to the commission by a method other than mail, on the date the commission receives the request for agency action.
- (7) A person who has not previously filed a timely request for agency action in accordance with Subsection (3) may object to a final assessment issued by the commission by:
  - (a) paying the tax, fee, or charge; and p
  - (b) filing a claim for a refund as provided in Section 59-1-1410. f

Additional guidance on timely filing within the thirty-day deadline is provided Utah Admin. Rule R861-1A-20, as follows:

- (1) Except as provided in Subsection (2), a petition for adjudicative action must be received in the commission offices no later than 30 days from the date of the action 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 petition 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.
  - (c) A petition for adjudicative action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsections 68-3-8.5(2)(b) and (c).

### DISCUSSION

The Division issued its Notice of Deficiency and Audit Change to the Taxpayers on DATE, 2018 for tax year 2014. The Notice of Deficiency was mailed to the Taxpayers' address of record and the

Taxpayers did not argue this was an incorrect address. It is the same address the Taxpayers provided when filing the appeal. The Notice explained the appeal procedures and instructed the Taxpayers that if they disagreed with the audit, they would need to file a Petition for Redetermination, Form TC-738, by DATE, 2019. It was the Division's contention that the Taxpayers did not file their appeal until DATE, 2019, when REPRESENTATIVE FOR TAXPAYERS' submitted a letter with a power of attorney attached. In the letter, REPRESENTATIVE FOR TAXPAYERS' indicates that he wanted to discuss with the Division why the Division had rejected the Taxpayers' amended return. When the Division received the DATE, 2019 letter, the Division treated this letter as an appeal, forwarding it to the Appeals Unit. The Division's representative asked that the Commission dismiss the Taxpayers' appeal because it was not received within the 30-day time period to file an appeal provided at Utah Code §59-1-501.

REPRESENTATIVE FOR TAXPAYERS' testified at the Hearing on Motion that he did respond to the audit within the 30-day time period. He provided a copy of a letter he had mailed on DATE, 2019 to the auditor, along with a Certified Mail receipt that showed the letter had been addressed to the auditor and was received at the Tax Commission on DATE, 2019. Although the DATE, 2019 letter did not specifically state it was an appeal and no Form TC-738 was provided, it was clear that it was in response to the Audit Notice because it referred to the Letter ID number on the Audit Notice and a copy of the Audit Notice was attached. The letter makes it clear that REPRESENTATIVE FOR TAXPAYERS' disagreed with the audit. This DATE, 2019 letter was not forwarded to the Appeals Unit. Had this letter been forwarded to the Appeals Unit, it contained sufficient information to be treated as an appeal of the audit and an appeal would have been opened.<sup>1</sup> The representative for the Division acknowledged that the Division had received the letter in DATE 2019, but the Division had not treated the letter as if it was an appeal of the audit.

The thirty-day requirement for filing an appeal is set out by statute in Utah Code §59-1-501. However, in this case the Taxpayers' representative has established that he did, in fact, file sufficient information to appeal the audit with his letter dated DATE, 2019 and the attachments to the letter. On that basis, the Division's Motion to Dismiss should be denied.

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<sup>1</sup> The Tax Commission has by rule adopted the position that it will not reject a petition for redetermination because of form or content. Utah Admin. Rule R861-1A-22(3) provides, "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."

Jane Phan  
Administrative Law Judge

ORDER

Based on the foregoing, the Tax Commission denies the Division's Motion to Dismiss. This appeal will be scheduled for further administrative proceedings. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Lawrence C. Walters  
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.