

TAX TYPE: INCOME TAX
TAX YEAR: 2015
DATE SIGNED: 1/13/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYERS,</p> <p style="padding-left: 40px;">Petitioners,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>ORDER ON RESPONDENT’S MOTION TO DISMISS</p> <p>Appeal No. 19-1523</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2015</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYERS, Representative

For Respondent: REPRESENTATIVE FOR 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
 - (b) filing a claim for a refund as provided in Section 59-1-1410.

Additional guidance on timely filing within the thirty-day deadline is provided in 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 a Notice of Deficiency and Audit Change to the Taxpayers on June 6, 2019, for tax year 2015. The Notice of Deficiency was mailed to the Taxpayers' address of record, and the Taxpayers did not argue this was an incorrect address. The address was the same as was provided for the Taxpayers when this appeal was filed. 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. The Taxpayers did not submit an appeal until DATE, 2019, based on the postmark on the envelope, which was after the appeal period had expired. In the Motion to Dismiss, 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.

The representative for the Taxpayers explained that the Taxpayers brought him the Notice of Deficiency around July 2nd or July 3rd. The Taxpayers' representative states that he was concerned that he would be unable to get information together that he thought he needed in order to file an appeal, so he states that he had called the Auditing Division and spoke with a NAME-1 on July 2nd or 3rd. He states that he was told that he could take some additional time to file the appeal. At this point, there were still a few days left until the filing deadline of DATE. The Taxpayers' representative provided a telephone number that he said was the number he called. However, the telephone number was REPRESENTATIVE FOR RESPONDENT direct telephone line. REPRESENTATIVE FOR RESPONDENT explained that there was no NAME-1 in the Auditing Division that would have answered that number. At the time, there was a NAME-1 in the Appeals Unit, who has a different telephone number, so it is not clear who he had reached. The Taxpayers' representative did file the appeal on DATE, 2019, after the deadline had expired.

When the Taxpayers' representative filed the appeal, he did not provide copies of returns or amended returns or an audit adjustment from the IRS. Instead, he just filled out Form TC-738, which requires the taxpayers' names, mailing addresses, phone numbers, a signature, several simple check boxes and a place for a very brief explanation. In this space the Taxpayers' representative wrote, "We are unaware of what this is for and need to resolve with IRS. Asking for 90 days or longer to deal with IRS in resolving this matter. POA is on file and I have spoken with AUDITOR. Instructions from Auditor were to file this form for time to resolve." The representative had signed the Form TC-738 and included with the form a copy of the POA and the Notice of Deficiency. It should be noted that this is all that was needed to open an appeal in this matter. No additional documentation is required to open an appeal, but may be required later in the appeal process to prove the taxpayer's case after an appeal was opened.

The thirty-day requirement for filing an appeal is set by statute. The Taxpayers' Petition for Redetermination was not filed until after the deadline set by Utah Code §59-1-501 had expired. This language is not discretionary, and there is no statutory provision for extension of this deadline, even if good cause had been shown. In this matter, the explanation provided by the Taxpayers' representative is not sufficient to establish that an action on the part of the Tax Commission has denied the Taxpayers due process. The instructions on the audit notice were clear and told the Taxpayers the appeal needed to be filed by DATE, 2019. Further, it is unclear what the Taxpayers' representative had actually asked the Tax Commission employee in the telephone conversation he described or if he misunderstood the answer from

the Tax Commission employee. Based on Utah law there is no basis or discretion to extend the appeal filing deadline and the Tax Commission and the Auditing Division strictly apply the deadline. Based on the statutory provisions, the Commission is required to dismiss this appeal.

The audit is based on an IRS audit that increased the Taxpayers' federal tax liability and the Taxpayers are trying to get the IRS audit reversed. Although this appeal is dismissed, the Taxpayers may still provide information to the Auditing Division if the IRS does reverse or modify its audit. In addition, Utah Code §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. A taxpayer's claim of refund must meet the 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 Taxpayers' Petition for Redetermination was untimely; therefore, this remedy may also be available to the Taxpayers.

Jane Phan
Administrative Law Judge

ORDER

Because the Taxpayers did not file a Petition for Redetermination within the thirty-days provided by Utah law, the Commission hereby dismisses the Taxpayers' appeal. It is so ordered.

DATED this _____ day of _____, 2020.

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.