

20-664

TAX TYPE: INCOME TAX / WAIVER REQUEST

TAX YEAR: 2018

DATE SIGNED: 9/28/2020

COMMISSIONERS: J. VALENTINE, R. ROCKWELL, M. CRAGUN, L. WALTERS

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1,

Petitioner,

v.

TAXPAYER SERVICES DIVISION OF
THE UTAH STATE TAX COMMISSION,

Respondent.

**ORDER ON RESPONDENT'S
MOTION TO DISMISS**

Appeal No. 20-664

Account No. #####

Tax Type: Income Tax
Waiver Request/Penalties

Tax Year: 2018

Judge: Nielson-Larios

Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1 & TAXPAYER-2

For Respondent: RESPONDENT, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 3, 2020, for a Hearing on Respondent's ("Division's") Motion to Dismiss. The Division based its Motion to Dismiss on the contention that Petitioner's ("Taxpayer's") 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 30 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.

Utah Code Ann. § 59-1-1410, referenced in § 59-1-501(7), states the following in part:

- (8) (a) Except as provided in Subsection (8)(b) or Section 19-12-203, 59-7-522, 59-10-529, or 59-12-110, the commission may not make a credit or refund unless a person files a claim with the commission within the later of:
 - (i) three years from the due date of the return, including the period of any extension of time provided in statute for filing the return; or
 - (ii) two years from the date the tax was paid.

.....
- (9) If the commission denies a claim for a credit or refund, a person may request a redetermination of the denial by filing a petition or request for agency action with the commission:
 - (a) (i) within a 30-day period after the day on which the commission mails a notice of denial for the claim for credit or refund; or
 - (ii) within a 90-day period after the day on which the commission mails a notice of denial for the claim for credit or refund, if the notice is addressed to a person outside the United States or the District of Columbia; and
 - (b) in accordance with:
 - (i) Section 59-1-501; and
 - (ii) Title 63G, Chapter 4, Administrative Procedures Act.

.....

Additional guidance on filing within the 30-day deadline is provided in Utah Administrative Code R861-1A-20, as follows in part:

- (2) If a statute provides the period within which an appeal may be filed, a petition for adjudicative action 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.
 - (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).

....

With respect to the Tax Commission's mailing of the notice of deficiency, Utah Code § 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 § 59-1-1404(4) states:

[I]f 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.

Utah Code Ann. § 59-1-1417 provides the following about the burden of proof for this proceeding, with § 59-1-1417(1) stating the following:

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

In accordance with § 59-1-1417, the burden of proof is on the Taxpayer in this matter. On January 30, 2020, the Division issued a Waiver Decision (“Notice”) to the Taxpayer, at the following address:

TAXPAYER ADDRESS-1
CITY-1, UT #####-####

The Division explained that the Taxpayer used this address to file their 2018 individual income tax return on October 15, 2019. The Notice explained the appeals procedures and instructed the Taxpayer that if the Taxpayer disagreed with the Waiver Decision, the Taxpayer needed to file a petition for redetermination, Form TC-738, by March 2, 2020, which was a Monday. The Division maintains that the Commission did not receive the Taxpayer’s petition for redetermination until April 1, 2020, which is the date the petition was emailed. The Division’s representatives asked the Commission to dismiss the Taxpayer’s appeal because it was not received within the 30-day time period.

The Taxpayer contends that the Notice was sent to the wrong address. He and his wife explained that on January 1, 2020, they moved from CITY-1, Utah, to CITY-2, Utah, and they updated the address with the U.S. Postal Service. During the hearing on motion, they explained the following about a phone call with a Tax Commission employee. In January 2020, they had a phone call with a Tax Commission employee, and during that call, they told the employee that they had a new address because they moved from CITY-1 to CITY-2. They gave the new address to the employee so that their credit card payment would clear. During the hearing on motion, the Taxpayer and his wife explained that they had thought the employee updated their address in the Tax Commission’s system. During that call, they had also talked with the employee about the process for requesting a waiver. The employee explained that the Taxpayer needed to send an email and the Taxpayer would receive back a written response. The Taxpayer and his wife explained that they sent their email to the Waivers Unit, but did not get the Waiver Decision in the mail for several weeks. The Waiver Decision was dated January 30, 2020; the Taxpayer and his wife said they received it on February 20, 2020.

The Division explained that the Tax Commission's records show that on January 24, 2020, the Taxpayer and/or his wife had a conversation with a Tax Commission collection agent. The collection agent had noted in the Tax Commission's system that the Taxpayer made a payment by credit card and would be sending a waiver request. The Division noted that the collection agent did not document any change of address. The Division explained that the payment processing system is different from the Tax Commission's tax system. The Division explained that an address for the payment system is not a change for the tax system. The Division explained that it does not know if the Taxpayer and his wife provided a complete address or just a ZIP code. Additionally, the Division noted that the Taxpayer received the Notice before the March 2, 2020 deadline.

For this order, the Judge makes the following factual observations. The facts show the Taxpayer did not file within 30 days of receiving the Waiver Decision on February 20, 2020. Thirty days from February 20, 2020, was Saturday, March 21, 2020. The next business day was Monday, March 23, 2020. The Taxpayer did not file by Monday, March 23, 2020; he filed nine days later on April 1, 2020. Overall, he responded 41 days from the date they received the Waiver Decision. However, the Waiver Decision does not state the 30-day requirement for filing a timely appeal; instead, it provides only the March 2, 2020 deadline.

After considering the parties' information and arguments, this Order on Respondent's Motion to Dismiss denies the Division's motion to dismiss. After the Taxpayer and/or his wife had told a Tax Commission employee on January 24, 2020, that they had moved to CITY-2 and had given the employee an updated address, the Division issued a Waiver Decision to the Taxpayer on January 30, 2020, to the CITY-1, Utah address. On January 24, 2020, the employee should have made further inquiries about whether the Taxpayer and his wife intended to update their address for the Tax Commission's tax system or just use the address for the credit card payment. If the employee had made that inquiry, the Taxpayer and his wife could have clarified their intent to update their address and the Tax Commission could have issued the Waiver Decision to the Taxpayer's correct address. By failing to update the Taxpayer's address, the Taxpayer had significantly fewer days to review and respond to the Waiver Decision by the March 2, 2020 deadline. The Taxpayer did respond to the Waiver Decision after he received it. He did not respond within 30 days; however, the Waiver Decision did not inform the Taxpayer that there is generally a 30-day requirement for filing a timely appeal. In the interest of ensuring that the Taxpayer receives due process, the Division's motion to dismiss should be denied.

Aimee Nielson-Larios
Administrative Law Judge

ORDER

Based on the foregoing, the Division's Motion to Dismiss is denied. This matter will be scheduled for an Initial Hearing. It is so ordered.

DATED this 28th day of September, 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.