

APPEAL # : 22-1207  
TAX TYPE: INDIVIDUAL INCOME TAX  
TAX YEAR: 2018  
DATE SIGNED: 12/6/2022  
COMMISSIONERS: J.VALENTINE, M.CRAGUN, AND J.FRESQUES  
EXCUSED/RECUSED: R.ROCKWELL

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BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYERS,  Petitioners,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>ORDER ON RESPONDENT'S MOTION TO DISMISS</b>  Appeal No.    22-1207  Account No:  ##### Tax Type:    Individual Income Tax Tax Year:    2018  Judge:       Phan
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner:  PETITIONER'S REP-1, Representative  
                  TAXPAYER-1  
                  TAXPAYER-2

For Respondent:  RESPONDENT'S REP-1, Manager, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 28, 2022 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 Ann. §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...

- (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 the Notice of Deficiency and Audit Change to the Taxpayers on DATE, for tax year 2018. The Division mailed the Notice of Deficiency to the Taxpayers' last known address of record at the Tax Commission at the time that it was mailed. The Division pointed out that pursuant to Utah Code §59-1-501, the Taxpayers had thirty-days from the date the Notice of Deficiency was mailed to file an appeal. As stated in the Appeal Instructions that were included with the Notice of Deficiency, the

deadline to file an appeal was DATE. The Division's representative pointed out that the Taxpayers filed their appeal via facsimile on DATE, after the appeal period had expired. The Division requested the appeal be dismissed for untimely filing based on Utah Code §59-1-501. The Division's representative explained that although the Notice of Deficiency had been mailed to the Taxpayers' address of record at the time it was mailed, shortly after the Notice of Deficiency had been mailed, the Taxpayers had filed a subsequent year's Utah tax return that reported their new address in CITY-1, STATE-1. The Taxpayers' address of record was then updated to the CITY-1, STATE-1 address. When there had been no appeal filed in response to the Notice of Deficiency, the audit balance due became final and a balance due letter was issued. As the balance due letter was issued after the address change it was mailed to the Taxpayers' new address in STATE-1.

At the Hearing on Motion, the Taxpayers explained that they never saw the original Notice of Deficiency because they had moved to STATE-1 and, although they had placed a mail forwarding change with the U.S. Post Office, they stated they never received it. They did, however, receive the subsequent balance due letter which was mailed to their new address in STATE-1. At that time they reached out to the Tax Commission and that was when they had learned there had been an audit for tax year 2018. That was when the auditor had reprinted and emailed to them a copy of the Notice of Deficiency<sup>1</sup> and then they filed this appeal. After reviewing the audit, the Taxpayers' representative did prepare an amended Utah 2018 part-year tax return which the Taxpayers submitted with their appeal.

The Division's position was that because the Taxpayers had missed the thirty-day deadline set out at Utah Code §59-1-501 the appeal should be dismissed. The Division's representative, however, explained that the Division was reviewing the Taxpayers' 2018 amended Utah return for processing and that depending on that review might accept the amended return, regardless of whether the appeal remained open or was dismissed.

After reviewing the applicable law and the information submitted by the parties at the hearing, the Tax Commission is required to grant the Motion to Dismiss. The thirty-day requirement for filing an appeal is set by statute and the statute specifically states that the thirty-day period is from the date the

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<sup>1</sup> This copy is the only Notice of Deficiency submitted by the parties in the hearing file. This copy does appear to have been mailed to the Taxpayers' new address in CITY-1, STATE-1, but the Division's representative explained that the auditor had regenerated the notice out of the Division's database system and when they do that the database will automatically update the address to the current address of record. So the copy does not have the same address as the original Notice of Deficiency.

Division mails the Notice of Deficiency. 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. The Division sent the notice to the last known address for the Taxpayers on the records of the Tax Commission as is required by Utah Code §59-10-1404(4). Although the Taxpayers stated that they had filed an address change with the U.S. Postal Service, they had not changed their address on the records of the Tax Commission by specifically notifying the Tax Commission of their address change. Asserting nonreceipt of a Notice of Deficiency, which was properly mailed to the address of record, is not basis to allow a late filed appeal. The Tax Commission has concluded in prior appeals it would be appropriate to allow a late filed appeal only where the petitioner established that an action on the part of the Division or the Tax Commission had deprived them of due process rights, including the ability to file an appeal timely, for instance if a taxpayer had filed a change of address form with the Tax Commission, and then the Tax Commission failed to change the address of record. The Taxpayers failed to show this type of action on the part of the Tax Commission in this matter and this appeal should, therefore, be dismissed.

Although the appeal is dismissed, the Taxpayers may still work with the Division regarding their amended Utah return as the Division had indicated during the hearing. 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

The thirty-day requirement for filing an appeal is set by statute and is a jurisdictional requirement. 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 \_\_\_\_\_, 2022.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Jennifer N. Fresques  
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.