

APPEAL #: 22-1430
TAX TYPE: INDIVIDUAL INCOME TAX
TAX YEAR: 2015-2018
DATE SIGNED: 2/7/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL. AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. INCOME TAX AND EDUCATION DIVISION ¹ OF THE UTAH STATE TAX COMMISSION , Respondent.	ORDER ON RESPONDENT'S MOTION TO DISMISS Appeal No. 22-1430 Account No: ##### Tax Type: Individual Income Tax Tax Years: 2015 -2018 Judge: Phan
---	--

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER'S REP-1, Representative
For Respondent: RESPONDENTS REP-1, Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 23, 2023 for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division had filed its Motion to Dismiss asserting that Petitioner ("Taxpayer") had failed to file the Petition for Redetermination, or appeal, of the Utah audit deficiencies 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):

¹ Due to a reorganization at the Tax Commission, the name of the Tax Commission division that was the Respondent in this matter has been changed.

- (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).

Administrative Rule R861-1A-29(2)(a)(iv) provides that an initial hearing decision shall become final, as follows:

An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing. The date a party requests a formal hearing is the earlier of the

date the envelope containing the request is postmarked or the date the request is received at the Tax Commission.

DISCUSSION

For tax year 2015, the Division pointed out that the Division had issued the Notice of Deficiency and Estimated Income Tax on DATE. The Taxpayer had timely filed an appeal of the 2015 deficiency and the matter was assigned *Appeal No. 20-1396*. *Appeal 20-1396* proceeded to an Initial Hearing and the Tax Commission issued its *Initial Hearing Order* on DATE. The Taxpayer did not appeal that decision by requesting a formal hearing, so the *Initial Hearing Order* had become the final action in *Appeal No. 20-1396* thirty-days after it was issued. For tax years 2016 through 2018, the Division issued the Notices of Deficiency and Estimated Income Tax on DATE. The Taxpayer did not file an appeal of the assessments until DATE, based on the date the appeal was emailed to the Tax Commission. The Taxpayer's representative had signed and dated the Petition for Redetermination form on July 15, 2022 and she testified at the hearing that she thought it had been mailed by regular mail at that time, which still would have been late, but she noted that it was emailed later. The Taxpayer's representative had included a request to appeal tax year 2015 with the tax years 2016 through 2018 appeal, as she disagreed with the *Initial Hearing Order* issued in *Appeal No. 20-1396* for tax year 2015.

The Division requested that the appeals be dismissed for all tax years 2015 through 2018. For 2015, the Division requested dismissal because that year had already been appealed, the *Initial Hearing Order* issued DATE, and there had been no request for a formal hearing. For tax years 2016 through 2018 the Division requested the appeal be dismissed because the Taxpayer had failed to file within the statutory time period set out at Utah Code §59-1-501.

Regarding the reason why the Taxpayer had not requested a formal hearing if he disagreed with the *Initial Hearing Order* issued in *Appeal No. 20-1396*, the Taxpayer's representative stated that the Taxpayer was relying on the representative he had helping him at that time, which had been someone other than herself. The Taxpayer's representative explained the reason for the late filing of the appeal for tax years 2016 through 2018 was that the Taxpayer had not brought her the Notices of Deficiency until July 2022, after the time period had expired to file an appeal. She did file an appeal, which she thought had originally been mailed in July 2022 and was later emailed. She explained that the Taxpayer had not filed Utah returns for any of the years as it was the Taxpayer's position that he was not a Utah resident individual. The Division's audit was on the basis that the Taxpayer was domiciled in Utah for all of the tax

years. Because it was the Division's position that the Taxpayer was domiciled in Utah, the Division indicated that it would not review the audit outside of the appeal, but did indicate if the Taxpayer filed Utah nonresident returns for tax years 2016-2018, the Division may disallow the returns, but the Taxpayer may then have the right to appeal that disallowance, or the Taxpayer could pay the tax balance due and then request a refund for tax years 2016-2018.

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. For tax year 2015, the request to appeal now is procedurally inappropriate. The Commission's Initial Hearing Order in Appeal No. 20-1396 became final thirty-days after it was issued pursuant to Utah Admin. Rule R861-1A-29(2)(a)(iv), because the Taxpayer failed to request a Formal Hearing. Although a party is entitled to pursue a Formal Hearing in accordance with Utah Code Ann. §59-1-504, such a request is untimely once an Initial Hearing Order has become final.² Regarding tax years 2016 through 2018, 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 Division mails the Notice of Deficiency. The Taxpayer's 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 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. The Taxpayer failed to do so in this matter and this appeal should, therefore, be dismissed.

Although the appeal is dismissed, the Taxpayer may file Utah nonresident returns for tax years 2016 through 2018, and if the Division does not accept the returns, the action might result in new appeal rights. 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 Taxpayer's

² The Utah Court of Appeals has recognized that an "initial hearing decision shall become final upon the expiration of thirty days after the date of its issuance, unless a party has earlier filed a written request for a formal hearing." *Beall v. Utah State Tax Comm'n*, 2008 UT App 442.

Appeal No. 22-1430

Petition for Redetermination for tax years 2016 through 2018 was untimely; therefore, this remedy may also be available to the Taxpayer.

Jane Phan
Administrative Law Judge

ORDER

The Motion to Dismiss for tax year 2015 is hereby granted as the Tax Commission has already issued its decision on the 2015 audit in *Initial Hearing Order, Appeal No. 20-1396* and that decision became final. The Motion to Dismiss for tax years 2016 through 2018 are hereby granted as the thirty-day requirement for filing an appeal is set by statute, is a jurisdictional requirement and the Taxpayer failed to file a Petition for Redetermination within this thirty day period. It is so ordered.

DATED this ____ day of ____, 2023.

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.