

APPEAL #: 22-1704  
TAX TYPE: INDIVIDUAL INCOME TAX  
TAX YEAR: 2018  
DATE SIGNED: 2/28/2023  
COMMISSIONERS: M.CRAGUN, R.ROCKWELL, J.FRESQUES  
EXCUSED/RECUSED: J.VALENTINE

---

BEFORE THE UTAH STATE TAX COMMISSION

---

TAXPAYER,  Petitioner,  v.  INCOME TAX AND EDUCATION DIVISION <sup>1</sup> OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>ORDER ON RESPONDENT'S MOTION TO DISMISS</b>  Appeal No.    22-1704  Account No:  ##### Tax Type:    Audit - Individual Income Tax Tax Year:    2018  Judge:        Phan
--	--

---

**Presiding:**  
    Jane Phan, Administrative Law Judge

**Appearances:**  
    For Petitioner:  TAXPAYER  
    For Respondent:  RESPONDENT'S REP-1, Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on February 21, 2023 for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division had filed its Motion to Dismiss Petitioner's ("Taxpayer's") appeal of the Utah audit deficiency for tax year 2018 because the Taxpayer had failed to file the Petition for Redetermination, or appeal, 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.

---

<sup>1</sup> 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.

Appeal No. 22-1704

- (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).

Utah Code Sec. 59-1-1404 provides how notices are to be mailed as follows:

- (2) If the commission or a person is required to mail a document under this part:
  - (a) the commission or the person shall mail the document using:
    - (i) the United States Postal Service; or

- (ii) a delivery service the commission describes or designates in accordance with any rules the commission makes as authorized by Subsection (3); and
- (b) the document is considered to be mailed:
  - (i) for a document that is mailed using the method described in Subsection (2)(a)(i), on the date the document is postmarked; or
  - (ii) for a document that is mailed using the method described in Subsection (2)(a)(ii), on the date the delivery service records or marks the document as having been received by the delivery service for delivery in accordance with any rules the commission makes as authorized by Subsection (3).
- ...
- (4) Subject to Subsection (5), if 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.
- (5) In the case of a joint return filed by a husband and wife under Chapter 10, Individual Income Tax Act, if the commission is notified in writing by either spouse that separate residences have been established, the commission shall mail a duplicate of the joint notice to each spouse at each spouse's last-known address.

#### DISCUSSION

The Division issued the Notice of Deficiency and Audit Change to the Taxpayer on DATE, for tax year 2018. The Division mailed the Notice of Deficiency to the Taxpayer's last known address of record, ADDRESS-1. This was the address the Taxpayer had provided on the last Utah individual income tax return that she had filed with the Tax Commission prior to the issuance of the audit. The Division pointed out that pursuant to Utah Code §59-1-501, the Taxpayer 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 Taxpayer filed her appeal via email on DATE, after the appeal period had expired. The Division's Motion requested the Taxpayer's appeal of the audit deficiency be dismissed for untimely filing based on Utah Code §59-1-501.

At the Hearing on Motion, the Taxpayer explained that ADDRESS-1 was her friend's address and she had been using it for mailings while she was between permanent addresses. She was in the process of constructing a residence at the time, but it was not yet completed. She stated she would visit the friend to pick up the mail that had accumulated there from time to time. She stated that she did file her appeal as soon as she obtained the Notice of Deficiency from her friend's residence, but it was already after the statutory period had expired.

Appeal No. 22-1704

The Division's position was that because the Taxpayer had missed the thirty-day deadline set out at Utah Code §59-1-501, the Taxpayer's appeal should be dismissed and the audit deficiency upheld. The Division's representative did also try to explain to the Taxpayer the underlying audit and stated that the Internal Revenue Service had never accepted the amended federal return the Taxpayer had filed for tax year 2018 and for that reason the Division had audited the Taxpayer's corresponding amended 2018 Utah return. The Division's representative pointed out that if the IRS accepted the Taxpayer's amended federal return, the Taxpayer could contact the Division at that time about making the corresponding changes to the Utah income tax.

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 Taxpayer's appeal. 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 Division sent the notice to the last known address for the Taxpayer on the records of the Tax Commission as is required by Utah Code §59-1-1404(4). If the Taxpayer has a better address for Utah tax mailings, she needs to provide that address to the Utah State Tax Commission. 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 still work with the Division as was discussed at 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 Taxpayer's Petition for Redetermination was untimely; therefore, this remedy may also be available to the Taxpayer.

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 Taxpayer did not file a Petition for Redetermination within the thirty days provided by Utah law, the Commission hereby dismisses the Taxpayer's appeal. 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.