APPEAL # 23-1290
TAX TYPE: AUDIT - INDIVIDUAL INCOME TAX
TAX YEAR: 2019
DATE SIGNED: 03/28/2024
COMMISSIONERS: J. VALENTINE, M. CRAGUN, J. FRESQUES, R. ROCKWELL

BEFORE THE UTAH STATE TAX COMMISSION

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| TAXPAYER-1 AND TAXPAYER-2,<br><br>Petitioners,<br><br>v.<br><br>INCOME TAX AND EDUCATION DIVISION OF THE UTAH STATE TAX COMMISSION,<br><br>Respondent. | **ORDER DENYING RESPONDENT'S MOTION TO DISMISS**<br><br>Appeal No. 23-1290<br><br>Account No: #####<br>Tax Type: Audit - Individual Income Tax<br>Tax Year: 2019<br><br>Judge: Phan |

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

**Appearances:**
For Petitioners: TAXPAYER-1, Taxpayer
TAXPAYER-2, Taxpayer
For Respondent: RESPONDENT'S REP-1, for the Division

## STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on March 12, 2024, for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division had filed its Motion to Dismiss Petitioners' ("Taxpayers'") appeal of the Utah audit deficiency for tax year 2019, because the Taxpayers had failed to file a Petition for Redetermination form 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).

Utah Code Sec. 59-1-1404 provides how notices are to 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.

Utah Admin. Rule R861-1A-22 provides what needs to be included in a Petition for Redetermination and how nonconforming appeals are processed as follows:

> (2) Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:
> (a) name and street address and, if available, a fax number or email address of petitioner or the petitioner's representative;
> (b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;
> (c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;
> (d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax . . .
> (e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the origination division or officer . . .
> (3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

## DISCUSSION

The Division issued the Notice of Deficiency and Audit Change to the Taxpayers on DATE. The Division had mailed the Notice of Deficiency to the Taxpayers' last known address of record, which was the same address used by the Taxpayers when they submitted their appeal. The Division pointed out that

pursuant to Utah Code §59-1-501, the Taxpayers had thirty (30) 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 email on DATE, which was two months after the appeal period had expired. The Division's Motion requested the Taxpayers' appeal of the audit deficiency be dismissed for untimely filing based on Utah Code §59-1-501.

At the Hearing on Motion, the Taxpayers explained that before the Notice of Deficiency had been issued, they had been in contact with the Division and had responded to the Division after receiving a Request for Verification Letter from the Division. The Taxpayers had claimed a renewable energy credit on their 2019 Utah Individual Income Tax return and the Request for Verification Letter asked the Taxpayers to provide a copy of their form TC-40E, which is a form that needs to be approved by the Governor's Office of Energy Development (OED). At the hearing, the Taxpayers testified that they had contacted the Division in response to the Request for Verification Letter to let the Division know that the Taxpayers had contacted OED to obtain a copy of the TC-40E form and told the Division they would provide it to the Division as soon as they received it from the OED. The Taxpayers testified at the hearing that when the Taxpayers received the DATE Notice of Deficiency, the Taxpayers were surprised that the Division had not waited for them to obtain a copy of the TC-40E form. They testified, however, that a few days after receiving the Notice of Deficiency, they received from OED a copy of their TC-40E form, which stated the Taxpayers qualified for a $$$$$ renewable energy credit. The Taxpayers delivered the form TC-40E to the Division on DATE, along with a copy of the Request for Verification Letter. The Taxpayers testified that it was their understanding that a completed TC-40E form was all that the Division needed to resolve the audit. They testified that they were later surprised to receive a Notice of Taxes Due and Intent to Lien letter, mailed on DATE. At this point, the Taxpayers realized the audit had not been resolved.

At the hearing, the representative for the Division acknowledged the Division's receipt of the TC-40E form on DATE, with the Request for Verification letter, and acknowledged that this had been received by the Division during the thirty (30) day appeal period. However, because the Taxpayers had not filled out a Petition for Redetermination form, or made any statement with their submission that they were appealing the audit, the Division did not treat the submission as an appeal request.[1] The Division's

[1] The Division's representative stated that the reason the Division did not allow the Taxpayers the renewable energy

position was that the Taxpayers had not filed an actual Petition for Redetermination during the thirty (30) day deadline set out at Utah Code §59-1-501, so the Taxpayers' appeal should be dismissed.

After reviewing the applicable law and the information submitted by the parties at the hearing, the Tax Commission notes that the Taxpayers did respond to the Division on DATE, within the thirty (30) day period for filing an appeal. The Taxpayers' response contained information the Taxpayers thought would resolve the audit. The Taxpayers' response should have put the Division on notice that the Taxpayers disagreed with the audit. Although the Taxpayers did not file with their documentation an actual Petition for Redetermination form, the Tax Commission has in previous appeals considered other documentation submitted by taxpayers during the thirty (30) day period sufficient to qualify as a nonconforming appeal and commence an appeal. Utah Admin. Rule R861-1A-22(3) provides, "The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present." The rule provides that the Tax Commission would have to give the taxpayer written notice of the defect in the petition or appeal and an opportunity to file an amended or substitute petition. In this case, the Division did not forward the Taxpayers' DATE, submission to the Appeals Unit for the Appeals Unit to make a determination as to whether it was sufficient to commence an appeal, or if the Taxpayer should have been notified in writing that it was a nonconforming appeal.

Although the thirty (30) day requirement for filing an appeal is set by Utah Code §59-1-501, the information submitted at the hearing supports that the Taxpayers had filed a nonconforming appeal during this thirty (30) day period and that was sufficient to commence an appeal during this period. Had the filing been forwarded to the Appeals Unit, it could have contacted the Taxpayers in writing about providing a Petition for Redetermination form or other missing information. The Tax Commission has concluded in prior appeals it would be appropriate to allow a late filed appeal where the petitioner

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credit based on the TC-40E Form, once the Division received it from the Taxpayers, was because the TC-40E Form stated that the credit was for tax year 2020 and not tax year 2019.

established that an action on the part of the Division or the Tax Commission had deprived them of due process rights,[2] and that is the situation in this appeal. Therefore, the Division's Motion to Dismiss should be denied.

Jane Phan
Administrative Law Judge

ORDER

Based on the foregoing, the Tax Commission denies the Division's Motion to Dismiss. The appeal will be scheduled for further administrative hearing proceedings on the merits of the Taxpayers' appeal. It is so ordered.

DATED this _____ day of _____, 2024.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

**Notice of Appeal Rights** 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.

[2] *See Utah State Tax Commission Order of Dismissal, Appeal No. 23-124* (3/16/2023), *Order Allowing Appeal to Proceed, Appeal No. 23-621* (6/13/2023) and *Dismissal, Appeal No. 22-1756* (2/14/2023). These decisions are available for review in a redacted format at https://tax.utah.gov/commission-office/decisions.