

18-499
TAX TYPE: INCOME TAX
TAX YEAR: 2014, 2015
DATE SIGNED: 08/20/2018
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

| | |
|---|---|
| TAXPAYERS, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent. | ORDER ON RESPONDENT’S MOTION TO DISMISS Appeal No. 18-499 Account No. ##### Tax Type: Income Tax Tax Years: 2014 and 2015 Judge: Phan |
|---|---|

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYERS, EA
TAXPAYER-1
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Audit Manager
REPRESENTATIVE FOR RESPONDENT-2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on August 14, 2018 for a Hearing on Respondent’s (“Division”) Motion to Dismiss. The Division had issued Notices of Deficiency and Audit Change on October 13, 2017 for tax years 2014 and 2015. Petitioners (“Taxpayers”) had filed a TC-738 Petition for Redetermination form on March 21, 2018, which is the official form used to file an appeal of an audit deficiency. The Division filed its Motion to Dismiss this appeal on the grounds that the Taxpayers had missed the filing deadline set out at Utah Code §59-1-501.

APPLICABLE LAW

Utah Code §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...

The following requirements apply to a petition for redetermination in relevant part at Rule R861-1A-22 of the Utah Administrative Rules, 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 e-mail 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 issue, the lien date;
 - (e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

...
- (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's representative explained that when they had mailed the Notices of Deficiency, they were mailed to the last known address at that time for the Taxpayers, which was ADDRESS-1. In fact, the Division had mailed requests for information to this address and the Taxpayers had responded with the information prior to the Division issuing the Notices of Deficiency on October 13, 2017. The Notices explained the appeals procedures, and instructed the Taxpayers that if they disagreed with the audits, they "must file a Petition for Redetermination, TC-738, by November 12, 2017." The instructions go on to explain how to obtain the Form TC-738 and how to submit the appeal. Because the Taxpayers

did not submit a TC-738 until March 21, 2018, the Division's representative asked the Commission to dismiss the Taxpayers' appeal because it was not received within the 30-day time period.

The Taxpayer and her representative did not refute that the Notices of Deficiency had been mailed to the address of record. They explained that they had been in contact with the Auditor by email and felt that they had filed an appeal by email. The Taxpayers were living in STATE-1 at the time and their representative was a tax preparer in STATE-1. They explained they were not familiar with Utah's appeal process. The Taxpayers' representative pointed to an email she had sent to the Auditor NAME-1 on November 9, 2017. In that email she explained that the Taxpayers had lived in STATE-1 "well over the 761 days¹ referenced in our conversation . . ." She goes on to state, "I would really appreciate a review of this decision, as it is just not reasonable that the TAXPAYERS' file as residents of Utah." The Auditor responded by email stating, "I unfortunately cannot change my audits unless you can provide information to show that TAXPAYER-1 changed her voter registration to STATE-1. We have records that she either registered or updated her Utah registration on June 9, 2015. . . . If you can show that she did not re-register or that she registered in STATE-1, I can review the audits again."

It is clear from the representative for the Taxpayers' email on November 9, 2017 that she disagreed with the audit and wanted a "review" or appeal. The Auditor's response did not refer the Taxpayer to the appeal rights listed on the Statutory Notice or to the Appeals Unit. Instead, she said she could not change the audits without additional information. She also did not point out that the appeal deadline was November 12, 2017.

Although Utah Code Sec. 59-10-501 provides a 30-day period for filing an appeal, the law and rule do not require an actual Form TC-738 be filed. Utah Admin. Rule R861-1A-22(2) provides that a "petition for adjudicative action need not be in any particular form, but shall be in writing . . ." The Form TC-738 is a matter of convenience because it solicits all the information set out at Utah Admin. Rule R861-1A-22(2) as required for filing an appeal. However, if someone fails to provide all the information required in Rule 22 to appeal, the Commission may not reject the appeal because of nonconformance in form or content, but instead must give the taxpayer notice of the defect and fifteen days to provide the missing information. See Utah Admin. Rule R861-1A-22(3). The email from the Taxpayers' representative dated November 9, 2017 was submitted within the time period for filing an appeal and indicated a disagreement with the audit and a desire for a "review." This was a nonconforming appeal. It

¹ The 761 day exception is provided at Utah Code Subsection 59-10-136(4). If Taxpayers are absent from Utah for 761 days or more and meet the other specified criteria set out in that subsection, they may not be considered domiciled in Utah, regardless of being registered to vote in Utah.

Appeal No. 18-499

should have been forwarded to the Appeals Unit. The Appeals Unit would have given notice under Utah Admin. Rule R861-1A-22(3) of the defect and allowed the Taxpayers fifteen days to provide the missing information. The Taxpayers did later provide the missing information when they submitted the TC-738.

On the basis that the November 9, 2017 email, although nonconforming, was a timely filed appeal, the Division's Motion to Dismiss should be denied.

Jane Phan
Administrative Law Judge

ORDER

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

DATED this _____ day of _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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.