21-170
TAX TYPE: INCOME TAX
TAX YEAR: 2016
DATE SIGNED: 6/23/2021
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R.ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**ORDER ON RESPONDENT'S MOTION TO DISMISS** Appeal No. 21-170 Account No. ##### Tax Type: Income Tax Tax Year: 2016 Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER
For Respondent: RESPONDENT, Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on June 14, 2021 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 §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, or

(b) within a 90-day period after the date the commission mails a notice of deficiency to the person in accordance with Section 59-1-1405, if the notice of deficiency is addressed to a person outside the United States or the District of Columbia.

(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 mailed the Notice of Deficiency and Audit Change to the Taxpayer at his last known address of record on August 4, 2020, and that was not in dispute. At the Hearing on Motion, the Representative for the Division pointed out that based on Utah Code §59-1-501 there is a 30 day deadline for filing an appeal that starts when the Notice of Deficiency is mailed. In this appeal, the 30 day deadline ended on September 3, 2020. The Taxpayer did not file his appeal until February 16, 2021, months after the appeal deadline had already expired. The appeal had been submitted by email, so was received on the date submitted. Because the Taxpayer had missed the 30 day deadline set out at Utah Code §59-1-501, it was the Division's position that the appeal should be dismissed. However, the Division's representative did state that the Taxpayer could still file a tax return for the tax year 2016 and the Division would consider that filing. The audit had been a nonfiling audit estimate.

The Taxpayer explained that in March 2020 they had received notice that they were being audited and did not respond at that time because they were in the process of moving to a new residence and then the Taxpayer's father-in-law passed away, and then there were other complications due to COVID.

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 commission mails the Notice of Deficiency. The Taxpayer's Appeal 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 the Tax Commission to extend the deadline, even if good cause had been shown. The Audit Notice of Deficiency was not issued until the audit was concluded in August 2020. The Taxpayer did point to complications from the COVID-19 pandemic. However, there has been no legislation to provide the Tax Commission authority to extend appeal deadlines due to the COVID-19 pandemic and the Tax Commission does not have authority to do so absent action by the Utah Legislature. In fact, there have been a number of prior appeals where the taxpayer missed deadlines because of complications that arose from COVID-19 and the Tax Commission has concluded that absent legislation it does not have authority to extend the deadlines for that reason.[1] The Tax Commission has concluded in prior appeals it would be appropriate to allow late appeals 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 file a return for 2016 and the Division will review the return. 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,

[1] See *Utah State Tax Commission, Orders of Dismissal in Appeal Nos. 20-1100 and 20-1022* (8/18/2020); and *Appeal No. 20-1932* (4/13/2021). These and other Tax Commission Decisions are available for review in a redacted format at Tax https://tax.utah.gov/commission-office/decisions.

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 __________________, 2021.

John L. Valentine
Commission Chair

Michael J. Cragun
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.