09-2422
TAX TYPE: INCOME TAX
TAX YEAR: 2013
DATE SIGNED: 11-5-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**ORDER DENYING REQUEST FOR FORMAL HEARING/SET ASIDE DEFAULT** Appeal No. 09-2422 Account No. ##### Tax Type: Income Tax Tax Year: Judge: Phan

STATEMENT OF CASE

On August 26, 2013, the Commission issued its Order of Default in this matter. Petitioner ("Taxpayer") had failed to appear at an Initial Hearing set on August 19, 2013. The Order of Default informed the Taxpayer that it would become final unless the Taxpayer filed a written request to proceed to a Formal Hearing within thirty-days of the date of the Order. The recourse provided to Taxpayer to contest the Order was to request a Formal Hearing it was not to ask that the default be set aside. On October 4, 2013, the Commission received a letter dated September 18, 2013, but not postmarked until October 2, 2013, requesting that the default be set aside.

Administrative Rule R861-1A-29(1)(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.

Although the Taxpayer had signed and dated the Motion to Set Aside the Default as of September 18, 2013, the postmark shows a considerable delay in getting the request mailed to the

Utah State Tax Commission. The postmark shows the letter to have been mailed from CITY, Utah on October 2, 2013, after the thirty-day deadline had expired. The Commission's Initial Hearing Order of Default became final before the Taxpayer mailed in the request. Although a party is entitled to pursue a Formal Hearing in accordance with Utah Code §59-1-504, such a request is untimely once an Initial Hearing Order has become final. Thus, the Taxpayer is not entitled to pursue a Formal Hearing in this matter which would have been the Taxpayer's only recourse to having the Default set aside.

_____
Jane Phan
Administrative Law Judge

ORDER

Based on the foregoing, the Taxpayer's request is denied.

DATED this _____day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner