

09-3795

AUDIT

TAX YEARS: 2008 & 2009

SIGNED: 06-21-2011

COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN

EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioners,

v.

AUDITING DIVISION, OF THE UTAH STATE
TAX COMMISSION,

Respondent.

**ORDER DENYING REQUEST FOR
RECONSIDERATION**

Appeal No. 09-3795

Tax Type: #####

Audit Period: 1/1/08-5/31/09

Judge: Phan

STATEMENT OF CASE

This matter came before the Utah State Tax Commission upon a request, filed by Petitioners (the Taxpayers) on July 24, 2011, in which the Taxpayers ask for additional time to review the Tax Commission's Findings of Fact, Conclusions of Law, and Final Decision, issued June 21, 2011, ("Final Decision") and an extension to file a notice of appeal or a request for reconsideration. The Taxpayers had submitted this request for extension after the 20 day period to file a request for reconsideration had expired.

APPLICABLE LAW

Utah Code Sec. 63G-4-302 provides that a party may, within 20 days after the date an order constituting final agency action has been issued, file a written request for reconsideration.

Utah Administrative Rule R861-1A-29 provides that within 20 days a party may file a written request for reconsideration "alleging a mistake of law or fact, or the discovery of new evidence."

DISCUSSION

In the request the Taxpayer explained the reason for the late filing was that they were out of the state until July 20, 2011. She wrote in the request, "I arrived home on 07-20-2011 to find a letter from Administrative Law Judge Jane Phan and the decision and order dated 07-21-11."¹ She asked due to the time limitation for an extension to file a request for reconsideration as well as a notice of appeal.

DECISION AND ORDER

Appeal No. 09-3795

The 20 day period to file a request for reconsideration is set by statute. The Taxpayers' request for an extension to file was submitted after the deadline had already expired. The Commission does not have authority to extend the deadline to file a request for reconsideration. The Taxpayer also asked for an extension to file a notice of appeal. If the Taxpayers disagreed with the final decision they could have pursued judicial review in accordance with Utah Code 59-1-601 et seq. and 63G-4-401 et seq. However, to do so they must file in either the District Court or the Utah Supreme Court and it is up to the respective courts to determine whether or not it would grant an extension.

Based upon the foregoing, it is the decision and order of the Utah State Tax Commission that the request for extension to file a request for reconsideration is denied because of the Taxpayers' failure to file the request within the 20 day statutory deadline. It is so ordered.

DATED this ____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

NOTICE: You have thirty (30) days after the date of this order to pursue judicial review of this order pursuant to Utah Code Ann. §§59-1-601 et seq. and 63G-4-302 et seq.

JP/10-0251.drc

¹ This appears to be a misstatement as the Final Decision was mailed and dated June 21, 2011.