

12-2730
TAX TYPE: SALESPERSON LICENSE
TAX YEAR: 2012
DATE SIGNED: 12-21-12
COMMISSIONERS: B. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>ORDER DISMISSING APPEAL</p> <p>Appeal No. 12-2730</p> <p>Tax Type: Salesperson License</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on a Petition for Expedited Hearing, filed by Petitioner (“Salesperson”) on November 16, 2012 to appeal Respondent’s (“Division”) decision, dated October 2, 2012, to suspend the Salesperson’s license to sell motor vehicles. Because the Salesperson’s appeal had not been filed within the thirty day time period provided by Utah Admin. Rule R861-1A-20(4), a Notice of Appeal; Order Requiring Response was issued on November 20, 2012. This Order required a response to the appeal from the Division as well as provided a period for the Salesperson to submit a reply. The Division’s response was received on November 29, 2012, asking that the appeal be dismissed. No Reply was received from the Salesperson.

APPLICABLE LAW

Utah Admin. Rule R861-1A-20(4) provides an appeal of an action taken by the Division must be filed within 30 days from the date of the notice as follows in pertinent part:

- (a) An appeal of an action taken by the Motor Vehicle Division under Title 41, Chapter 1a, or the Motor Vehicle Enforcement Division under Title 41, Chapter 3, must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal.

DISCUSSION

From the appeal form filed by the Salesperson and the Response from the Division including the Exhibits, the Division had issued its letter suspending the Salesperson’s license on October 2, 2012. This

letter was addressed to the Salesperson at ADDRESS, CITY UT #####. The letter notified the Salesperson of the action to suspend the license and provided instructions on how he could file an appeal of the action, including that the appeal be filed “within thirty-days of the date of this notice.” On November 1, 2012, the Division issued the second letter to the Salesperson informing him that his license was now suspended effective November 1, 2012. This letter was sent to the same address as the first letter. This letter provides no appeal rights or instructions. Upon receipt of the second letter the Salesperson filed the appeal. He had attached a copy of the second letter to the appeal form. Since the Salesperson did not submit a reply in this matter there is no written explanation as to why he did not file an appeal of the October 2, 2012 letter notifying him of the Division’s action to suspend the license and appeal rights. The Salesperson had spoken to a Technician in the Appeals Unit over the telephone and he had said he had not received a letter prior to the one dated November 1, 2012.

In the Response from the Division, the Division points out that the appeal period had expired by November 2, 2012 and pointed out that both letters had been mailed to the same address. The Division points to Admin. Rule R861-1A-20 which provides thirty-days to file an appeal of an action by the Division. It was the Division’s position that the appeal be dismissed as untimely based on the requirements of the rule.

Upon review of the information presented by the parties, the appeal should be dismissed. There was no explanation from the Taxpayer that would indicate the October 2, 2012 letter informing him of the action to suspend the license and right to appeal had been mailed to an incorrect address. He had received the second letter notifying him the suspension was now in effect, which was mailed to same address. When a notice from a Tax Commission Division has been addressed to the proper address, without other factors or circumstances, the assertion alone that one has not received the notice is not cause to allow a late filed appeal.

Jane Phan
Administrative Law Judge

ORDER

Based on the foregoing, the Commission hereby dismisses the Salesperson's appeal. It is so ordered.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. 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.