

14-1728  
TAX TYPE: CENTRALLY ASSESSED PENALTY  
TAX YEAR: 2013  
DATE SIGNED: 3-30-2015  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p><b>ORDER ON RESPONDENT’S MOTION TO DISMISS</b></p> <p>Appeal No. 14-1728</p> <p>Account No. #####</p> <p>Tax Type: Centrally Assessed Penalty</p> <p>Tax Year: 2013</p> <p>Judge: Phan</p>
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STATEMENT OF THE CASE

A Telephonic Status Conference had been held in this appeal on January 27, 2015. At the Conference REPRESENTATIVE FOR PETITIONER, was present by telephone for the Petitioner (“Property Owner”) and for Respondent (“Division”) REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General, and RESPONDENT. The Division indicated at the Conference that it intended to file a Motion to Dismiss the appeal on the basis that the appeal had not been timely filed. The representative for the Property Owner was given thirty-days from the date that the Motion to Dismiss was filed to submit a Response to Motion and the parties were instructed that the decision on Motion would be made based on the written submissions of the parties. On January 30, 2015, the Division filed its Motion to Dismiss. No Response to the Motion was received from the Property Owner.

APPLICABLE LAW

Utah Code §59-2-207 provides that the owner of a mining property is required to file a statement regarding the property, as well as provides for the assessment of a penalty if the statement is not filed as follows in pertinent part:

(1)(a) A person, or an officer or agent of that person, owning or operating property described in Subsection (1)(b) shall file with the commission, or a from prescribed by the commission, a sworn statement on or before March 1 of each year . . .

(3)(a) Except as provided in Subsection (3)(c), the commission shall assess a person a penalty as provided Subsection (3)(b), if the person, or an officer of agent of that person fails to file: (i) the statement required under Subjection (1)(a) on or before the

later of: (A) March 1; or (B) if the commission allows an extension under Subsection (1)(c) for filing the statement, the day after the last day of the extension period; . . .

(5) A person subject to a penalty under Subsection (3) may appeal the penalty according to the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

The Administrative Procedures Act provides that the agency may set the deadline for filing an appeal, at Utah Code Sec. 63G-4-201(4) as follows:

When initial agency determinations or actions are not governed by this chapter, but agency and judicial review of those initial determinations or actions are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules.

The Utah State Tax Commission has set by rule the deadline for filing under Utah Admin. Rule R861-1A-20, as follows in pertinent part:

- (2) Except as provided in Subsection (3), a petition for redetermination must be received in the commission offices no later than 30 days from the date of a notice 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 request 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.

Further guidance on the filing deadline is provided in Rule R861-1A-22 of the Utah Administrative Rules, as follows in relevant part:

- (1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

#### DISCUSSION

The Division issued the Notice of Penalty to the Taxpayer on April 29, 2013. The notice explains the appeals procedures, and instructs the Taxpayer that if they disagree with the audit, they must file a petition “on or before the later of June 1, 2013 or within 30 days of the date of this mailing.” It does

provide an address and further instructions for filing an appeal. The Division maintains that the Taxpayer's appeal was not received by the Commission until September 4, 2014. The Division's representative asked the Commission dismiss the Taxpayer's appeal because it was not received within the 30 day time period.

The Taxpayer did not submit a Response to the Motion.

The thirty-day requirement for filing an appeal is set by statute and rule. It is a jurisdictional requirement. The Notice of Penalty was issued by the Division on April 29, 2013. The Taxpayer's Petition for Redetermination was received by the Commission on September 4, 2014, significantly beyond the 30-day deadline provided in Utah Code §63G-4-201(4) and Utah Administrative Code R861-1A-20. This language is not discretionary, and the appeal should be dismissed absent evidence that actions on the part of the Property Tax Division interfered with Taxpayer's due process rights. In this case, there is no information from the Property Owner to indicate such interference.

Jane Phan  
Administrative Law Judge

ORDER

The thirty-day requirement for filing an appeal is set by statute and rule and is a jurisdictional requirement. Because the Taxpayer did not file an appeal within the thirty days period, the Commission hereby dismisses the Taxpayer's appeal. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

John L. Valentine  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

**Notice of Appeal Rights:** 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.

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