

08-1553
AUDIT- SALES TAX
TAX YEAR: 2007
SIGNED: 05-12-2009
COMMISSIONERS: P. HENDRICKSON, M. JOHNSON, D. DIXON
EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	ORDER DENYING FORMAL HEARING
Petitioner,	Appeal No. 08-1553
vs.	Account No. #####
AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,	Tax Type: Audit – Sales Tax
Respondent.	Tax Year: 2007
	Judge: Jensen

STATEMENT OF CASE

On January 27, 2009, the Commission issued its Initial Hearing Order in this matter, in which it informed the parties that the order would become the final decision and order of the Commission unless a party filed a written request to proceed to a formal hearing within thirty days of the date of the order. On February 28, 2008, the Petitioner listed above (the “Taxpayer”) mailed a letter to the Commission indicating that he was requesting a formal hearing. In the letter, the Taxpayer indicated that he had “talked to [the auditor on the case] about this letter being a few days late (past the 30 day window)” but did not indicate the outcome of that conversation.

Utah Administrative Code Rule R861-1A-29(1)(a)(iv) provides that the Commission’s initial hearing decision becomes final 30 days after its date of issuance, 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.

The Taxpayer filed a request for a formal hearing 32 days after the issuance of the Initial Hearing Order.¹ Accordingly, the Commission's Initial Hearing Order became final before the Taxpayer filed a request for a formal hearing. The Taxpayer makes reference to a discussion that he had with the auditor on this case, but does not indicate that the auditor took any action that would change the requirement in Utah law that a party requesting a formal hearing must do so within 30 days after the Commission issues its Initial Hearing Order. More important, the Taxpayer did not provide, nor has the Commission been able to locate, any legal authority to indicate that an auditor could waive a jurisdictional deadline such as the deadline to file a request for a formal hearing. Although a party is entitled to pursue a formal hearing in accordance with Utah Admin. Rule R861-1A-24(2)(a)(iv), such a request is untimely once an Initial Hearing Order has become final. For these reasons, the Commission finds that the Taxpayer is not entitled to pursue a formal hearing in this matter.

ORDER

On the basis of the foregoing, the Commission finds that its Initial Hearing Order became the Commission's Final Decision and Order prior to the Taxpayer requesting a formal hearing. Accordingly, the Taxpayer's request for a formal hearing is denied.

BY ORDER OF THE COMMISSION:

DATED this _____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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¹ In *Dusty's, Inc. v. Auditing Div.*, 842 P.2d 868 (Utah 1992), the Utah Supreme Court determined that the date an order bears on its face is the date that the Tax Commission issues an order.