
BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	ORDER GRANTING MOTION TO DISMISS Appeal No. 08-2099 Account No. ##### Tax Type: Corporate Franchise Audit Period: 04/01/98 – 03/31/07 Judge: Chapman
---------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP, from PETITIONER
For Respondent: RESPONDENT REP, from Auditing Division

STATEMENT OF THE CASE

On November 20, 2008, Auditing Division (“Division”) filed a Motion to Dismiss this matter on the basis that PETITIONER (the “taxpayer”) did not file its Petition for Redetermination within the 30-day statutory appeals period. On January 6, 2009, this matter came before the Commission for a Hearing on Motion.

APPLICABLE LAW

Utah Code Ann. §59-7-517(1) provides for the issuance of a notice of deficiency and filing of a petition for redetermination, as follows:

- (1) (a) If the commission determines that there is a deficiency in any tax imposed by this chapter, the commission may send notice of the deficiency to the taxpayer by registered mail, postage prepaid.
- (b) The notice shall set forth the details of the deficiency and the manner of computing the tax.
- (c) Within 30 days after the notice is mailed, the taxpayer may file a petition with the commission for a redetermination of the deficiency.

UCA §59-1-501 provides that “[a]ny taxpayer may file a request for agency action, petitioning the commission for redetermination of a deficiency.”

UCA §59-7-518 provides that “[a]ny notice required to be sent to a taxpayer under the provisions of this chapter, if sent to it at its last-known address as shown on the records of the commission, shall be sufficient for the purposes of this chapter.”

Utah Admin. Rule R861-1A-20 (“Rule 20”) provides the timeframes within which an appeal must be received, as follows in pertinent part:

-
- (2) . . . 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.

....

Utah Admin. Rule R861-1A-22 (“Rule 22”) provides, as follows in pertinent part:

A. 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

On September 10, 2008, the Division issued a Statutory Notice - Corporation Franchise Tax (“Statutory Notice”) to the taxpayer, in which it imposed additional corporate franchise tax for period April 1, 1998 through March 31, 2007. The Statutory Notice contained language informing the taxpayer that it had until Friday, October 10, 2008 to appeal the assessment. The taxpayer faxed a Petition for Redetermination

Appeal No. 08-2099

(“Petition”) to the Commission on Tuesday, October 14, 2008.¹ Because the taxpayer faxed its Petition four days after October 10, 2008, the Division asserts that the Commission no longer has jurisdiction to hear an appeal concerning the assessment. For these reasons, the Division asks the Commission to grant its Motion to Dismiss.

The taxpayer admits that it faxed its Petition on Tuesday, October 14, 2008. The taxpayer explains that after an IRS audit, it had to file approximately 400 amended returns in 2008. The taxpayer claims that it failed to file the return on October 10, 2008 because it has a relatively small staff to address numerous inquiries resulting from the amended returns. However, the taxpayer believes that it has information that would result in a reduction to the Division’s assessment and asks the Commission to allow its appeal to proceed so that it can present this information.

The 30th day after the Statutory Notice was issued was Friday, October 10, 2008. Rule 20 provides that a Petition must be received in Commission offices or postmarked no later than 30 days after the issuance of the Statutory Notice. The October 10, 2008 due date for the Petition falls on a Friday, a day that most Commission offices are closed. In addition, Rule 22 only allows for an extension to the appeals period if the 30-day deadline falls on a Saturday, Sunday or a legal holiday. Rule 22 does not provide for an extension if the deadline falls on a Friday. For these reasons, the Commission finds that the taxpayer failed to file its Petition within the statutory deadline. In accordance with Section 59-7-517(1)(c) and Rule 20(2), the Commission finds that it no longer has jurisdiction to hear the appeal.

ORDER

Based on the foregoing, the Commission grants the Division’s Motion to Dismiss.

1 Columbus Day fell on Monday, October 13, 2008.

Appeal No. 08-2099

DATED this _____ day of _____, 2009.

Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE COMMISSION:

The undersigned Commissioners have reviewed this matter and concur in this decision.

DATED this _____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

NOTICE of Payment Requirement: Any balance due as a result of this order must be paid within thirty days of the date of this order or a late penalty could be applied.

KRC/08-2099.ogm