

09-1495  
AUDIT  
SIGNED 10-21-2009

---

BEFORE THE UTAH STATE TAX COMMISSION

---

|  |  |
|--|--|
| <p>PETITIONER,<br/><br/>    Petitioner,<br/><br/>vs.<br/><br/>AUDITING DIVISION OF THE UTAH STATE<br/>TAX COMMISSION,<br/><br/>    Respondent.</p> | <p><b>ORDER GRANTING MOTION TO<br/>DISMISS</b></p> <p>Appeal No.    09-1495</p> <p>Account No.  #####</p> <p>Tax Type:    Income Tax</p> <p>Audit Period: 09/05/06 – 04/30/07</p><br><p>Judge:        Jensen</p> |
|--|--|

---

**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER, Taxpayer

For Respondent:    RESPONDENT REP, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on August 26, 2009 for a Hearing on a Motion to Dismiss filed by the Auditing Division of the Utah State Tax Commission (the "Division"). The Division had filed its Motion to Dismiss in this matter on the basis that the above-named Petitioner (the "Taxpayer") had failed to timely file an appeal of the audit deficiency for audit period of September 5, 2006 to April 30, 2007.

APPLICABLE LAW

A taxpayer may file a request for agency action, petitioning the commission for redetermination of a deficiency. Utah Code Ann. § 59-1-501.

To be timely, 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 . . ." Utah Admin. Code R861-1A-20(2).

DISCUSSION

The Division mailed its Statutory Notice of Deficiency and Audit Change to the Taxpayer on March 10, 2009. The notice indicated that to contest the audit, the Taxpayer had to file a written appeal within thirty days. The Division maintains that the Taxpayer did not file a written Petition for Redetermination until April 28, 2009. The Taxpayer explained that she is legally blind. Because she is legally blind, she has to wait for her husband or her son to read papers to her. She indicated that she did not know about cigarette taxes until her son read the Division's notice to her. By the time her son read the notice, the thirty days for filing an appeal had passed. The Taxpayer explained that it seemed unfair for the Division to wait almost two years to notify her of an audit but only give her 30 days to file an appeal.

Because the Taxpayer did not file a Petition until after the 30-day deadline, the Petition cannot support an appeal unless the Commission determines that this case involves extraordinary circumstances that would allow a late-filed appeal. In general, such extraordinary circumstances involve actions by the Tax Commission that interfered with the taxpayers' due process rights. In this case, there is no evidence that the Tax Commission interfered with the Taxpayer's appeal. Accordingly, the Commission grants the Division's Motion to Dismiss for failure to file a timely appeal.

Although the Commission must dismiss this appeal, the Commission notes that there may be another remedy available to the Taxpayer. Recent changes in Utah law provide that a Taxpayer who has not previously filed a timely appeal may pay the tax at issue and then file a claim for a refund. Utah Code Ann. § 59-1-501(7). The Tax Commission will either grant or deny the claim for a refund. If the Tax Commission denies the claim, then a taxpayer may appeal the denial by filing a petition with the commission within 30 days of the denial. Utah Code Ann. § 59-1-1410(9). A taxpayer's claim of refund must still meet the general deadline for claims of refunds, which in most cases will be two years from the date of payment. Utah Code Ann. § 59-1-1410(8)(a)(ii). This remedy may be available even though the Commission must dismiss this portion of the Taxpayer's appeal.

ORDER

The thirty-day requirement for filing an appeal is jurisdictional and the Taxpayers' failure to meet the requirement is cause for dismissal of this appeal. Based upon the foregoing, the Commission dismisses the Taxpayer's appeal in this matter. This Order does not prevent the Taxpayer from seeking further remedy as provided by Utah Code An n. § 59-1-501(7) and Utah Code Ann. § 59-1-1410(9). It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

---

Clinton Jensen  
Administrative Law Judge

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

**Notice and Appeal Rights:** Failure to pay the balance due as a result of this order within thirty days may result in an additional late payment penalty. You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission pursuant to Utah Code 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 Sec. 59-1-601 et seq. and 63G-4-401 et seq.

*CDJ/09-1495.ogm*