

12-1  
CORPORATE FRANCHISE TAX  
TAX YEAR: 2007  
SIGNED: 07-02-2012  
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN  
EXCUSED: R. JOHNSON

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  vs.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>ORDER ON RESPONDENT'S MOTION TO DISMISS</b>  Appeal No. 12-1  Account No. #####-1 Tax Type: Corporate Franchise Tax Tax Year: 2007  Judge: Phan
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on June 11, 2012, for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division based its Motion to Dismiss on the contention that Petitioner's ("Taxpayer") Petition for Redetermination was not timely filed.

APPLICABLE LAW

Utah Code §59-1-501<sup>1</sup> provides that a taxpayer must file a petition for a redetermination of a deficiency within thirty days of the issuance of a notice of deficiency, as follows in pertinent part:

- (2) A person may file a request for agency action, petitioning the commission for redetermination of a deficiency.
- (3) Subject to Subsections (4) through (6), a person shall file the request for agency action described in Subsection (2):

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<sup>1</sup> The Division cited to Utah Code Sec. 59-7-517 (2007) which was in effect during the audit period at issue. This section has been replaced by 59-1-501 in the current version of the code. As these are procedural, rather than substantive provisions, the Commission applies the current section at 59-1-501 in this matter. Regardless, either section provided that the Petition for Redetermination needed to be submitted within thirty days.

- (a) within a 30-day period after the date the commission mails a notice of deficiency to the person in accordance with Section 59-1-1405...

The time for filing an appeal is governed by Rule R861-1A-20 of the Utah Administrative Rules, 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) 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
  - (b) 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.

The time for filing a petition is governed by Rule R861-1A-22 of the Utah Administrative Rules, as follows in relevant 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

The Division issued a Notice of Deficiency to the Taxpayer on June 9, 2011. The taxpayer acknowledged that the notice was sent to the address used on the Taxpayer's returns. The notice explains the appeals procedures, and instructs the taxpayer that if they disagree with the audit, they must file a petition within 30 days of the date of the notice. The Division notes that based on the envelope maintained in the file which shows the postmark date, the Taxpayer's Petition for Redetermination was not mailed until December 14, 2011. 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's representative stated that although the notice had been sent to the correct address it had been misdirected within the Taxpayer's business. He also explained that it had been received at a time when the Taxpayer's tax small department was down one person because of maternity leave and it fell in the middle of the Taxpayer's filing deadlines for their consolidated federal and state returns. The Taxpayer has some approximately 80 separate returns due during this period. The Taxpayer was also filing two years worth of amended state and federal returns because of the finalization of a federal audit.

The Taxpayer's second point was that if the appeal was denied as late filed, the Taxpayer would be allowed to request a refund after paying the tax, which request would then get back to the Division for consideration, and the Taxpayer would eventually be back to the same point to have their information

considered. He pointed out that it would just take more steps or procedures and more time, than if the Commission denied the Motion to Dismiss and allowed the late filed appeal to proceed.

Upon review of the information provided by the parties and in the file, the Motion to Dismiss should be granted. The thirty-day requirement for filing an appeal is set by statute and is a jurisdictional requirement which is strictly construed. The Commission has not been granted discretion to extend the deadline, even if good cause were to be shown. In this case the Statutory Notice was issued by the Division on June 9, 2011. The Taxpayer's Petition for Redetermination was not mailed to the Commission until December 14, 2011. This is beyond the 30-day deadline provided in Utah Code §59-1-501.

Although the appeal will be dismissed, there is another remedy available to the Taxpayer. Utah Code §59-1-501(7) allows taxpayers who have not previously filed timely appeals to object to a final assessment by paying the tax and then filing a claim for a refund as provided in the statutes. The claim will be processed by the Division and the Taxpayer Services Division of the Utah State Tax Commission, who will either grant or deny the claim for a refund. If these divisions deny the claim, then a taxpayer may appeal the denial by filing a petition with the State Tax Commission. *See* Utah Code §59-1-1410(9). A taxpayer's claim of refund must still meet the general deadline for all claims of refunds, which is generally two years from the date of payment. *See* Utah Code §59-1-1410(8)(a)(ii). At the hearing the Division representative was unsure whether these provisions would apply in this matter because the audit was for a period prior to the adoption of this provision. However, Utah Code §59-1-501(7) is applicable as the timing is determined based on when the tax amount would be paid and refund requested, not the tax year at issue.

The Taxpayer's Petition for Redetermination was untimely and the Commission is required to grant the Motion to Dismiss based on the applicable statutes, regardless of whether allowing the appeal to continue now would save time and avoid a number of other procedural steps for the Taxpayer and possibly the Division, if the Taxpayer pursued a refund under Utah Code §59-1-501(7).

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Jane Phan  
Administrative Law Judge

ORDER

Based on the foregoing, the Commission hereby dismisses the Taxpayer'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.