

12-360  
MOTOR VEHICLE  
SIGNED: 03-29-2012  
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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| <p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>MOTOR VEHICLE ENFORCEMENT<br/>DIVISION OF THE UTAH STATE TAX<br/>COMMISSION,</p> <p>Respondent.</p> | <p><b>ORDER OF DISMISSAL</b></p> <p>Appeal No. 12-360</p> <p>Tax Type: MVED/Unlicensed Location</p> <p>Judge: Phan</p> |
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STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission from a Petition for Redetermination form filled by Petitioner (Dealership) on January 24, 2012. The Dealership had filed the form to appeal the decision of Respondent (Division) in which the Division assessed a fine against the Dealership of \$\$\$\$ for a violation of Utah Code Sec. 41-3-210. The letter assessing the fine was issued on October 20, 2011. The Division representative states in the letter, "You have the right to appeal this decision pursuant to the Administrative Procedures Act." It goes on to provide instructions on how an appeal would be filed as well as provide that the deadline to file an appeal to be, "within 30 days of the date of this notice."

As the Dealership had failed to file the appeal within the 30 day period, an Order to Show Cause why Appeal Should Not Be Dismissed was issued on February 15, 2012. The Dealership responded by explaining that there had been a change in the Dealership's secretarial employee position and mail had been mismanaged or misplaced.

APPLICABLE LAW

The Administrative Procedures Act at Utah Code §63G-4-201(4) provides in pertinent part:

. . . the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules.

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The time for filing a petition is governed by 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.

Utah Administrative Rules Rule R861-1A-20(2) provides as follows:

Except as provided in Subsection (3), a petition for redetermination of a deficiency must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal . . .

#### DISCUSSION

The Division issued its notice assessing the fine on October 20, 2011. The notice explained the appeal procedures and the 30 day deadline. The Dealership missed the deadline to file an appeal as the Petition for Redetermination was not received by the Commission until January 24, 2012.

The thirty-day requirement for filing an appeal is set by rule. The mishandling of the mail on a part of an employee of the dealership is not basis to allow a late filed appeal. Utah Administrative Code R861-1A-22 provides that a Petition for redetermination must be received in the commission offices, or postmarked, no later than 30 days from the date of the notice. This language is not discretionary, and the appeal should be dismissed.

#### ORDER

The Dealership failed to file an appeal within the thirty days provided by Utah Administrative Rule. The Commission hereby dismisses the Dealership'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

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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.