

14-179
TAX TYPE: SALES & WITHHOLDING TAX
TAX YEAR: 2009 THROUGH 2011
DATE SIGNED: 9-9-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, vs. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>ORDER ON RESPONDENT'S MOTION TO DISMISS</p> <p>Appeal No. 14-179</p> <p>Account No. #####</p> <p>Tax Type: Sales & Withholding Tax</p> <p>Tax Years: 2009, 2010, 2011, 2009, 2010 and 2011</p> <p>Judge: Phan</p>
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Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYER, Owner, TAXPAYER
For Respondent: RESPONDENT-1, Waiver Unit, Taxpayer Services Division
RESPONDENT-2, Waiver Unit, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on July 8, 2014 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

A taxpayer may appeal a Waiver Decision pursuant to Utah Admin. Rule R861-1A-42(1)(d) as follows:

If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act and commission rules.

Petitions for an adjudicative proceeding pursuant to Utah Code Secs. 59-1-501 or 63G-4-201 are provided at 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.

DISCUSSION

The Division issued its Waiver Decision to the Taxpayer on December 2, 2013. The Decision was mailed to the address of ADDRESS, CITY, UT ZIP CODE. This is the same address used by the Taxpayer in this appeal. The notice explains, "If you disagree with this decision, you may appeal by filling out and sending in form TC-738, Petition for Redetermination, by January 2, 2014." It goes on to provide further instructions for how to obtain the appeal form on line and an address to which the appeal form was to be mailed. The Taxpayer filed the appeal via facsimile on January 3, 2014, based on the facsimile date at the top of the appeal form.

The Division filed the Motion to Dismiss and asked the Commission dismiss the Taxpayer's appeal because it was not received within the 30 day time period. The Division cites to Utah Admin. Rule R861-1A-42 which provides that the Division's Waiver Decision may be appealed. Utah Admin. Rule R861-1A-20 provides for receipt of electronically filed appeals as well as the deadline to file an appeal.

The Taxpayer stated that he had been on a payment plan, working towards payment of a past due liability to get the account current. He states that it had been his understanding that once he was able to pay the tax amount he could apply for waiver of the penalties. However, when he had applied only \$\$\$\$ of the penalties had been waived. He was expecting more of a waiver. He also states that he had tried to call the numbers on the Waiver Decision prior to the expiration of the thirty-days and had not received a call back. It was his contention that he was not able to speak to someone in the Division in time to file the appeal.

The Division did point out that January 1, 2014 was a holiday and so telephones would not have been answered that day. The Division also wonders why the Taxpayer waited till the last minute to try to file the appeal.

Upon review of the information presented at the hearing and the rule and statutory provisions, the Commission must dismiss this appeal. The Waiver Decision was issued by the Division on December 2, 2013. The Taxpayer's Petition for Redetermination was received by the Commission on January 3, 2014, based on the date it had been faxed to the Commission. This is beyond the 30-day deadline. The deadline is not discretionary, and the appeal should be dismissed absent a showing by the Taxpayer of extraordinary circumstances that interfered with Taxpayer's due process rights. In general, such extraordinary circumstances involve actions by the Tax Commission that interfered with a taxpayer's

ability to file the appeal. In this case, there were instructions on the Waiver Decision on how to file an appeal that did not require a telephone call to be made or returned by either the Division or the Appeals Unit. Further, the Taxpayer did not have the telephone number that he called, or specific information on the date of the call. An assertion that a telephone call was made and not returned before the appeal deadline is not basis to allow a late filed appeal. In this case the Taxpayer also asserted that he thought once he paid the tax amount based on the payment plan, more of the penalties would be waived. However, again he had no details on whom, if anyone, at the Tax Commission had told him this, or evidence of a written agreement to this affect. Generally, the tax amount would need to be paid on a past due account, before a waiver request could even be considered. Based on the law and the lack of any detailed or specific information from the Taxpayer, the appeal should be dismissed as it was not filed within the thirty-day period as provided in rule and there was insufficient showing that Division or Commission action interfered with the Taxpayer's ability to timely file an appeal.

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 _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Appeal Rights and Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied. If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.

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