

16-729

TAX TYPE: INCOME TAX

TAX YEAR: 2010

DATE SIGNED: 9/92016

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,

Petitioner,

v.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

**ORDER ON RESPONDENT'S
MOTION TO DISMISS**

Appeal No. 16-729

Account No. #####

Tax Type: Income Tax

Tax Year: 2010

Judge: Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, Taxpayer, appearing by telephone

For Respondent: RESPONDENT, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on August 15, 2016 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 Ann. §59-1-501 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):
 - (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...

Filing within the thirty-day deadline 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) 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.

Further guidance on the filing deadline is provided in 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 a Notice of Deficiency to the Taxpayer on April 5, 2016. Taxpayer does not contend the notice was sent to the wrong address. 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 maintains that the Taxpayer's Petition for Redetermination was not received by the Commission until May 6, 2016, having been sent by email on May 6, 2016. The Division's representative asked the Commission to dismiss the Taxpayer's appeal because it was not received within the 30 day time period.

The Taxpayer stated that he missed the deadline because he filled out the petition, signed it, and scanned it on May 5, 2016, but forgot to push send on the email. He did not realize the mistake until May 6, 2016 at which time he sent the email.

The thirty-day requirement for filing an appeal is set by statute and is a jurisdictional requirement. The Statutory Notice was issued by the Division on April 5, 2016. The Taxpayer's Petition for Redetermination was received by the Commission via email on May 6, 2016. This is beyond the 30-day deadline provided in Utah Code Ann. §59-1-501. Utah Administrative Code R861-1A-20 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 statutory notice. This language is not discretionary, and the appeal should be dismissed absent 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 due process rights. In this case, there is no evidence that the Taxpayer was not given due

process, and the appeal should be dismissed.

Although the appeal is dismissed, there may be another remedy available to the Taxpayer. Utah Code Ann. §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 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. *See* Utah Code Ann. §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 Ann. §59-1-1410(8)(a)(ii). Taxpayer's Petition for Redetermination was untimely, therefore, this remedy may be available to the Taxpayer. Accordingly, if the tax is paid, the Taxpayer may still pursue administrative remedies by filing a claim for refund at any time within two years of that payment.

Clinton Jensen
Administrative Law Judge

ORDER

The thirty-day requirement for filing an appeal is set by statute and is a jurisdictional requirement. Because the Taxpayer did not file a Petition for Redetermination within the thirty days provided by Utah law, the Commission hereby dismisses the Taxpayer's appeal. It is so ordered.

DATED this _____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Appeal No. 16-729

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.