

APPEAL # 24-1442

TAX TYPE: SALES & USE TAX

TAX YEAR: 2020, 2021, 2022, AND 2023

DATE SIGNED: 11/26/2024

COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BUSINESS TAXES AND DISCOVERY DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	ORDER ON RESPONDENT'S MOTION TO DISMISS Appeal No. 24-1442 Account No: ##### Tax Type: Audit - Sales & Use Tax Tax Years: 2020, 2021, 2022, 2023 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Representative
 PETITIONER'S REP-2, Representative
For Respondent: RESPONDENT'S REP-1, Assistant Attorney General
 RESPONDENT'S REP-2, Assistant Attorney General
 RESPONDENT'S REP-3, Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 12, 2024 for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division had filed its Motion to Dismiss Petitioner's Appeal of the Statutory Notice-Sales and Use Tax ("Notice") for the tax period DATE to DATE. The Notice had indicated a refund request was granted in large part, but a portion of the refund request was denied. Petitioner ("Taxpayer") had filed a Petition for Redetermination ("Appeal") of the Notice, but the Division filed a Motion to Dismiss the Taxpayer's appeal pursuant to URCP 12(b)(1) because the Taxpayer's Petition was untimely, arguing the Utah State Tax Commission, therefore, lacks jurisdiction.

APPLICABLE LAW

Utah Code Ann. §59-1-1410 provides that a taxpayer must file a petition for a redetermination of a refund denial within thirty days of the issuance of the notice of denial, as follows in pertinent part:

(9) If the commission denies a claim for a credit or refund, a person may request a redetermination of the denial by filing a petition or request for agency action with the commission:

(a) (i) within a 30-day period after the day on which the commission mails a notice of denial for the claim for credit or refund; or (ii) within a 90-day period after the day on which the commission mails a notice of denial for the claim for credit or refund, if the notice is addressed to a person outside the United States or the District of Columbia; and

(b) in accordance with: (i) Section 59-1-501; and (ii) Title 63G, Chapter 4, Administrative Procedures Act.

(10) The action of the commission on a person's petition for redetermination of a denial of a claim for credit or refund is final 30 days after the day on which the commission sends the commission's decision or order, unless the person seeks judicial review..

Utah Code Sec. 59-1-1404 provides the following:

(2) If the commission or a person is required to mail a document under this part:

(a) the commission or the person shall mail the document using:

(i) the United States Postal Service; or

(ii) a delivery service the commission describes or designates in accordance with any rules the commission makes as authorized by Subsection (3); and

(b) the document is considered to be mailed:

(i) for a document that is mailed using the method described in Subsection (2)(a)(i), on the date the document is postmarked; or

(ii) for a document that is mailed using the method described in Subsection (2)(a)(ii), on the date the delivery service records or marks the document as having been received by the delivery service for delivery in accordance with any rules the commission makes as authorized by Subsection (3).

(4) Subject to Subsection (5), if the commission is required to mail a notice to a person under this part, the commission shall mail the notice to the person at the person's last-known address as shown on the records of the commission.

Additional guidance on timely filing within the thirty-day deadline is provided in Utah Admin. Rule R861-1A-20, as follows:

(1) Except as provided in Subsection (2), a petition for adjudicative action must be received in the commission offices no later than 30 days from the date of the action 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 petition 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.

- (c) A petition for adjudicative action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsections 68-3-8.5(2)(b) and (c).¹

The Utah Rules of Civil Procedure provide the following regarding dismissals at URCP 12(b) as follows:

- (b) How presented. Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, crossclaim, or third-party claim, must be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:
- (1) lack of jurisdiction over the subject matter,
 - (2) lack of jurisdiction over the person,
 - (3) improper venue,
 - (4) insufficiency of process,
 - (5) insufficiency of service of process,
 - (6) failure to state a claim upon which relief can be granted,
 - (7) failure to join an indispensable party.

A motion making any of these defenses must be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion must be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties must be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

DISCUSSION

The Division issued the Notice to the Taxpayer on DATE. The Division had mailed the Notice to the same address for the Taxpayer as the address the Taxpayer had provided on its refund request. In the Motion, the Division pointed out that the appeal needed to be submitted “within a 30-day period after the day on which the commission mails a notice of denial,” citing Utah Code §59-1-1410(9)(b). The Division noted that the petition for redetermination must be made in accordance with Utah Code §59-1-501 and Title 63G, Chapter 4, Administrative Procedures Act. The Division pointed out that Utah Code §59-1-501(3)(a) requires a petition for redetermination to be filed “within a 30-day period after the date the commission mails a notice...” The Division then pointed out that if the appeal is mailed, “the filing date is ...the date the person is considered to have mailed [it] in accordance with Section 59-1-1404.” The

¹ Utah Code 68-3-8.5 provides in relevant part, “(2) (a) Except as otherwise provided by statute: (i) a report, other than a trigger report, or a payment that is transmitted through the United States mail is considered to be filed or made and received by the state or political subdivision on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it . . .”

Division explained that the petition is “considered to be mailed...on the date [it] is postmarked...if the United States Postal Service was used,” citing Utah Code §59-1-1404(2).² The Division pointed out in the Motion that the Notice had stated in two places that the deadline for filing an appeal was DATE. The Division noted that the postmark on the envelope, which contained the Taxpayer’s Appeal, was dated DATE. The envelope was also date stamped as received by the Appeals Unit on DATE, consistent with a mailing postmarked DATE. The Division’s Motion requested the Taxpayer’s Appeal of the Notice to be dismissed for untimely filing based on URCP 12(b)(1).

At the Hearing on Motion, the Taxpayer’s representative explained that they had waited until the last minute to submit the Appeal, but he stated he had mailed the Appeal before the deadline, on DATE. He explained that they had waited until the end of the appeal period because they were hoping the portion of the refund that the Division had agreed to issue, which was \$\$\$\$\$, would be paid to the Taxpayer, who needed that money. He stated it was his understanding that once the Taxpayer filed the Appeal, a hold would go on the account and the agreed portion of the refund would not be paid until the contested portion, which was only \$\$\$\$\$, was resolved. He pointed out that the Taxpayer had originally filed the refund request more than two years ago, so the Taxpayer had been waiting for the refund payment for a long period of time. The Taxpayer’s representative testified at the hearing that was the reason he had waited until DATE to mail the Appeal. The Taxpayer’s representative also testified that he was the one who personally took the envelope containing the Appeal to the U.S. Post Office on DATE, and put the envelope in the mail slot inside the building. He stated that no one else was with him and he had no explanation regarding why the letter was not postmarked until DATE. He stated he had sent the Appeal by regular mail and that from now on, he would make sure he sent it certified or registered, so he would have a receipt.

At the hearing, the Division pointed out that the Taxpayer’s representative’s statements were statements in support of the Taxpayer’s interest and there was no other corroborating information to support that the Appeal was mailed on DATE. The Division further noted that based on Utah Code §59-1-1404, if the petition for redetermination was placed in the mail, it was considered to be filed as of the date of the postmark. In this matter, the postmark date was DATE, which was considerably after the date the Taxpayer’s representative testified he mailed it.

After reviewing the legal arguments, applicable law and the evidence submitted by the parties at the hearing, the Tax Commission is required to grant the Motion to Dismiss the Taxpayer’s appeal. The thirty-day requirement for filing an appeal is set by statute and the statute specifically states that the

² The Division also cited to Utah Code §68-3-8.5(2)(a)(i) and Rule R861-1A-20(a)(ii), which provides that a petition is deemed to be timely if the date of the postmark on the envelope indicates the petition was mailed on or before the last day of the 30-day period.

thirty-day period is from the date the Division mails the Notice. Based on the postmark date, the Taxpayer's Petition for Redetermination was not filed until after the deadline set by Utah Code Ann. §59-1-1410 had expired. This language is not discretionary, and there is no statutory provision for extension of this deadline, even for good cause. The Tax Commission has concluded in prior appeals it would be appropriate to allow a late filed appeal only where the petitioner established that an action on the part of the Division or the Tax Commission had deprived them of due process rights, including the ability to file an appeal timely. The Taxpayer failed to show an action on the part of the Tax Commission or the Division caused its late filing. This appeal should, therefore, be dismissed.

Jane Phan
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 26th day of November, 2024.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
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.