APPEAL # 26-841
TAX TYPE: SALES AND USE TAX
TAX YEAR: 2022-2025
DATE SIGNED: 08/28/2026
COMMISSIONERS: J.VALENTINE, R.ROCKWELL, J.FRESQUES, AND J. DEEDS

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. 26-841 Account No: ##### Tax Type: Audit - Sales & Use Tax Tax Years: 2022 -2025 Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Attorney at Law
For Respondent: RESPONDENT'S REP-1, Assistant Attorney General
RESPONDNET'S REP-2, Tax Examiner Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on August 3, 2026, for a Hearing on Respondent's ("Division") Motion to Dismiss. The Division filed its Motion to Dismiss on the basis that Petitioner ("Taxpayer") had not filed its Petition for Redetermination ("appeal") within the statutory time period as required by Utah Code Ann. §59-1-501(3).

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; or

(b) within a 90-day period after the date the commission mails a notice of deficiency to the person in accordance with Section 59-1-1405 if the notice of deficiency is addressed to a person outside the United States or the District of Columbia.

(4) If the last day of a time period described in Subsection (3) is a Saturday, Sunday, or legal holiday, the last day for a person to file a request for agency action is the next day that is not a Saturday, Sunday, or legal holiday.

(5) A person that mails a request for agency action shall mail the request for agency action in accordance with Section 59-1-1404.

(6) For purposes of Subsection (3), a person is considered to have filed a request for agency action:

(a) if the person mails the request for agency action, on the date the person is considered to have mailed the request for agency action in accordance with Section 59-1-1404; or

(b) if the person delivers the request for agency action to the commission by a method other than mail, on the date the commission receives the request for agency action.

(7) A person that has not previously filed a timely request for agency action in accordance with Subsection (3) may object to a final assessment issued by the commission by:

(a) paying the tax, fee, or charge, penalty accrued in accordance with Section 59-1-401, or interest accrued in accordance with Section 59-1-402; and

(b) filing a claim for a refund as provided in Section 59-1-1410.

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).

Utah Code Ann. §59-1-1404 provides how notices are to mailed as follows:

(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).

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(a) describing or designating one or more delivery services the commission or a person may use to mail a document under this part if a delivery service the commission describes or specifies is consistent with the definition of "designated delivery service" in Section 7502, Internal Revenue Code; or

(b) providing procedures or requirements for determining the date a delivery service records or marks a document as having been received by the delivery service for delivery if those rules are consistent with Section 7502, Internal Revenue Code.

(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.

. . . .

Utah Code Ann. §68-3-8.5(2) mailing reports or payments and when a report or payment is considered to be mailed:

(1) As used in this section:

(a) "Payment" means money required or authorized to be paid to the state or a political subdivision of the state.

(b) "Report" means a report, claim, tax return, statement, or other document required or authorized to be filed with the state or a political subdivision of the state.

(c) "Trigger report" means a report that, upon its receipt by a political subdivision of the state, triggers a responsibility on the part of the political subdivision to respond.

(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; and (ii) a trigger report that is transmitted through the United States mail is considered to be filed and received on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it, if the report is addressed to the attention of: (A) the county clerk, for a county; (B) the city recorder, for a city; (C) the town clerk, for a town; or (D) the clerk or

> comparable official of the political subdivision, for any other political subdivision of the state.
> (b) A report or payment that is mailed but not received by the state or political subdivision, or received but the cancellation mark is illegible, erroneous, or omitted, is considered to be filed or made and received on the date it was mailed if:
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> (i) the sender establishes by competent evidence that the report or payment was deposited in the United States mail on or before the date for filing or paying; and
> (ii) the sender files with the state or political subdivision a duplicate within 30 days after the state or political subdivision gives the sender written notification of nonreceipt of the report or payment.
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> . . . .

DISCUSSION

The Division issued a Notice of Deficiency and Audit Change ("Notice") to the Taxpayer on DATE. The Notice was mailed to the last-known address for the Taxpayer that was on the records of the Tax Commission at that time.[1] The Notice instructed the Taxpayer that if the Taxpayer wanted to file an appeal, the Petition for Redetermination needed to be filed by DATE. The first record the Tax Commission Appeals Unit had of receiving the Petition for Redetermination was when it was emailed to the Tax Commission on DATE. At that time, it was emailed with a cover letter from PETITIONER'S REP-1, the Taxpayer's attorney, in which PETITIONER'S REP-1 stated, "I am writing to follow up regarding the TC-738 appeal that was mailed to your office at 210 North 1950 West, Salt Lake City, Utah 84134[2] on DATE." The letter notes that PETITIONER'S REP-1 had not received an acknowledgement confirming receipt of the appeal and was sending a copy of the appeal to the Appeals Unit. The Petition for Redetermination form was signed and dated "DATE" (The incorrect year was clearly a typographical error).

In addition, there had been some email correspondence between PETITIONER'S REP-1 and the Appeals Unit of the Utah State Tax Commission about the appeal starting DATE. On DATE, PETITIONER'S REP-1 emailed the Appeals Unit stating, "I mailed a TC-738 for TAXPAYER but I haven't received anything. Could you please check for me?" On DATE, the Appeals Unit answered back, "We have not yet received your appeal in the mail." The Appeals Unit sent an additional email to PETITIONER'S REP-1 on DATE, asking PETITIONER'S REP-1 to "follow up with us within the next week to confirm whether it has been received." PETITIONER'S REP-1 followed up on DATE, and the

[1] The address, ADDRESS-1, was the same address that the Taxpayer provided for its mailing address when the Taxpayer filed the appeal of the audit deficiency.
[2] This is the correct address for mailing documents to the Tax Commission using the United States Postal Service. There is a different mailing address provided on the Tax Commission's website for mailing using Fedex, UPS, or other mailing services. *See* https://tax.utah.gov/contact/#mail.

Appeals Unit sent an email dated DATE, stating that the appeal still had not been received and asked the Taxpayer to email it to the Tax Commission. The Taxpayer's representative emailed the appeal to the Tax Commission on DATE.

The Division submitted its Motion to Dismiss on DATE. In the Motion, the Division stated that the Taxpayer had failed to file the appeal within the thirty (30)-day deadline required by Utah Code §59-1-501(3)(a), as the appeal was filed three weeks after the deadline. It was the Division's position that because the Taxpayer failed to meet this statutory deadline, the Tax Commission lacked jurisdiction to hear the appeal. The Division cited *Blaine Hudson Printing v. Utah State Tax Comm'n*, 870 P.2d 291, 292 (Utah Ct. App. 1994), in which the Utah Court of Appeals stated, "Without subject matter jurisdiction, the court or agency lacks the power to do anything beyond dismissing the proceeding." The Division pointed out that the Tax Commission has recognized that filing by the statutory deadline is a jurisdictional requirement, citing Tax Commission *Appeal No. 16-1445*. The Division presented a Declaration of RESPONDENT'S REP-2, in which RESPONDENT'S REP-2 stated that the Notice of Deficiency was mailed by certified mail to the Taxpayer and that the United States Postal Service tracking records showed that it was received by the Taxpayer on DATE. The Division provided a copy of the receipt and tracking information. The Division also pointed out at the Hearing on Motion, that this was not the first time the Taxpayer's representative had claimed to have timely mailed Petitions for Redetermination to the Tax Commission, but there was no record of the Petitions ever having been received at the Tax Commission. The Division provided copies of the two Tax Commission decisions where the Tax Commission had dismissed the late filed appeals. The Division also stated that they had asked the Taxpayer's representative to submit evidence that the Taxpayer had mailed the appeal, but nothing had been submitted.

The Taxpayer's representative explained at the Hearing on Motion, that he had mailed the Petition for Redetermination by regular mail with the United States Postal Service, so there was no postal tracking he could provide as evidence. He stated that he had personally prepared the envelope and put the Petition for Redetermination in the mail on DATE. He stated that there was a paralegal who assisted and could verify this, but he did not provide a declaration or affidavit from her to support this assertion. He argued that because he was an attorney, his statement that he had mailed the petition on DATE, was competent evidence that the appeal had been mailed timely and complied with Utah Code Ann. §68-3-8.5(2)(b). He argued under Utah Code Ann. §68-3-8.5(2)(b) the Petition for Redetermination should be deemed to have been mailed on DATE, because his statement was competent evidence and he had provided a copy of the Petition for Redetermination within 30 days of when he was notified of the nonreceipt. He also explained that in the two other cases involving him filing appeals late, he had sent those petitions by United Postal

Service ("UPS"),[3] so there was tracking at the time of the mailings. He stated that he was unaware that UPS did not keep this information after 90 days, so when the Division had requested those appeals be dismissed, he was not able to obtain proof of mailing.

In response, the Division's representative argued that the Taxpayer's representative's statement alone that he had mailed the Petition for Redetermination by the deadline did not meet the competent evidence requirement under Utah Code Ann. §68-3-8.5(2)(b).

The Tax Commission considers these facts as presented by the parties and the applicable law. The 30 day time period for filing an appeal is set by Utah Code §59-1-501. Pursuant to Utah Code §59-1-1404(4), the Division was required to mail the notice to the Taxpayer's "last-known address as shown on the records of the commission." The Division had properly mailed the Notice to the Taxpayer's last-known address on DATE, and receipt of the Notice was not disputed. The appeal deadline of DATE, was expressly stated on the Notice. The Taxpayer's Petition for Redetermination was not received by the Appeals Unit until DATE, when the Taxpayer's representative emailed it to the Tax Commission, after the deadline set by Utah Code §59-1-501.

Furthermore, the Taxpayer's representative did not reach out to the Appeals Unit to inquire about whether the Petition for Redetermination had been received until DATE, which is after the deadline had already passed. Utah Code §59-1-501 is not discretionary, and there is no statutory provision for extension of this deadline, even for good cause.[4] The Tax Commission has previously considered the application of Utah Code Ann. §68-3-8.5, but the applicable cases involved a circumstance where a postmark was not correct or was not legible and, in addition to receiving testimony from the taxpayer in those cases, there was also corroborating evidence from a second source and reasonable inference from the facts that supported that testimony. *See Orders on Respondent's Motion to Dismiss, Appeal No. 18-2296* (11/1/2019) and *Appeal No. 12-2785* (4/25/2013).[5] In this matter, the Taxpayer's representative stated he prepared the envelope for mailing and mailed it. He also stated that there was another person who could have supported this testimony, but he did not present an affidavit or declaration from her, or have her available to testify during the Hearing on Motion. In *Appeal No. 18-2296*, the taxpayer provided affidavits from two individuals that they had mailed the appeal at a smaller post office when that post

[3] The Tax Commission accepts appeals submitted by email to taxappeals@utah.gov, and emails provide a date and time.

[4] 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. *See Utah State Tax Commission's Order Denying Respondent's Motion to Dismiss, Appeal No. 23-1290* (3/28/2024). This decision is available for review in a redacted format at: https://tax.utah.gov/commission/decisions/. In the facts before the Commission in this appeal, no action on the part of the Division or the Tax Commission to deprive the Taxpayer of due process has been shown.

[5] These decisions are also available at: https://tax.utah.gov/commission/decisions/.

office was still open, but the postmark date was from a Salt Lake post office location a day later. In Appeal No. *12-2785*, the postmark on the envelope in which the appeal had been mailed was not legible. However, that taxpayer testified that he had mailed the appeal on November 5 and it was date stamped as received at the Tax Commission on November 8, so the Commission found that mailing three days prior was "not implausible for postal delivery." In this matter, all that has been presented is the testimony of PETITIONER'S REP-1. The original appeal was never received at the Tax Commission, and there was no second person's statement or affidavit, postal receipt or email date to corroborate that the appeal documents were actually placed in the mail on the date the Petitioner's representative has stated. The evidence in this matter is not sufficient to meet the competent evidence requirement of Utah Code Ann. §68-3-8.5(2)(b).[6] Upon review of the information submitted by the parties and the applicable law, the law requires that the Tax Commission dismiss this appeal because the Tax Commission lacks jurisdiction.[7]

Although the appeal is dismissed, 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 Division will either grant or deny the claim for a refund. If the Division denies the claim, then the 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). The Taxpayer's Petition for Redetermination was untimely, therefore, this remedy may be available to the Taxpayer.

Jane Phan
Administrative Law Judge

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[6] The Utah Court of Appeals considered the competent evidence requirement of Utah Code Ann. §68-3-8.5(2)(b) in *W. Valley City v. Foy*, 2004 UT App 335 (2004). In that case the Court of Appeals accepted the mailing date stated on a mailing certificate of a request for hearing, noting that the request deadline had been October 28, the mailing date stated on the mailing certificate was October 27, and the City had actually received the mailing on October 29. The court also noted in a footnote, "Because West Valley City failed to retain the envelope in which the Cooper Letter was sent, it is unable to refute the certificate of mailing, which states October 27 as the mailing date. Moreover, West Valley City consistently acknowledged in the proceedings below that the request for hearing was received in timely fashion. It will not be heard to argue otherwise for the first time on appeal."

[7] "Just as any court, the Commission should first determine that it has jurisdiction and, if it does not, dismiss the matter. Any action beyond its jurisdiction is void." *Varian-Eimac, Inc. v. Lamoreaux*, 767 P.2d 569, 570, 1989 Utah App. LEXIS 8, *3, 100 Utah Adv. Rep. 29. *See also Blaine Hudson Printing v. Utah State Tax Comm'n*, 870 P.2d 291, 292, 1994 Utah App. LEXIS 26, *2, 233 Utah Adv. Rep. 16 ("Both courts and quasi-judicial administrative agencies, such as the Tax Commission, must have subject matter jurisdiction to validly decide a controversy.") (internal citations omitted). "Therefore, the initial inquiry of any [adjudicative body] should always be to determine whether the requested action is within its jurisdiction." *Blaine Hudson Printing*, 870 P.2d at 292 (modification in original) (internal citations and quotations omitted).

ORDER

The 30 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 30 days provided by Utah law, the Commission hereby dismisses the Taxpayer's appeal. It is so ordered.

DATED this _____ day of _____, 2026.

John L. Valentine
Commission Chair

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

John T. Deeds
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.