

IN THE UTAH COURT OF APPEALS

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AlSCO, Inc.,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20100409-CA
v.)	
)	
Tax Commission, Auditing)	F I L E D
Division,)	(July 9, 2010)
)	
Respondent.)	2010 UT App 182

Original Proceeding in this Court

Attorneys: Peter W. Billings, William H. Adams, and Nora K. Brunelle, Salt Lake City, for Petitioner
Mark L. Shurtleff and Susan L. Barnum, Salt Lake City, for Respondent

Before Judges Davis, Orme, and Thorne.

PER CURIAM:

AlSCO, Inc. seeks our review of the Utah State Tax Commission's (Commission) order entered on April 5, 2010. We dismiss for lack of jurisdiction.

Utah Code section 63G-4-401(3)(a) provides that a party shall file a petition for judicial review of a final agency action within thirty days after the date that the order constituting the final agency action is issued. See Utah Code Ann. § 63G-4-401(3)(a) (2008). Rule 14 of the Utah Rules of Appellate Procedure specifies that "a petition for review shall be filed with the clerk of the appellate court within the time prescribed by statute, or if there is no time prescribed, then within thirty days after the date of the written decision or order." Utah R. App. P. 14(a) (emphasis added).

On April 5, 2010, the Commission issued its final decision. The decision contained a section titled "notice of appeal rights," which instructed the parties that they could file a request for reconsideration with the Commission within twenty days, pursuant to Utah Code section 63G-4-302, or the parties

could file a petition for judicial review in accordance with Utah Code section 63G-4-401.

On April 29, 2010, AlSCO, Inc. filed a document titled "Notice of Appeal" with the Commission. The "Notice of Appeal" was not filed within twenty days of the final decision as required for requests for reconsideration. See Utah Code Ann. § 63G-4-302(1)(a). On May 20, 2010, AlSCO, Inc. filed a petition for review in this court. The Utah Supreme Court has jurisdiction over final orders from the Utah State Tax Commission. See Utah Code Ann. § 78A-3-102(3)(e)(ii). However, rule 44 of the Utah Rules of Appellate Procedure permits the transfer of a petition for review to the court with appropriate jurisdiction so long as the petition is timely filed in either the district court, the court of appeals, or the supreme court. See Utah R. App. P. 44.¹

Transfer is not appropriate in this case because the petition for review was not filed with the clerk of the appellate court within thirty days of the April 5, 2010 final decision. See id. R. 14. The timely filing of a petition for review is a jurisdictional requirement. See Harley Davidson of N. Utah v. Workforce Appeals Bd., 2005 UT 38, ¶ 14, 116 P.3d 349. Because the petition for review was not timely filed, this court lacks jurisdiction, and we have only the authority to dismiss this matter. See Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989).

Accordingly, the petition for review is dismissed.

James Z. Davis,
Presiding Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge

1. AlSCO, Inc., asserts that rule 44 of the Utah Rules of Appellate Procedure permits this court to transfer AlSCO's "Notice of Appeal," filed with the Commission on April 29, 2010, to an appellate court so as to constitute a timely filed petition for review. However, rule 44 specifically limits the transfer of improperly filed cases between the district court, the court of appeals, and the supreme court. See Utah R. App. P. 44.