

09-2883
REVOCATION
SIGNED 01-21-2010

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Petitioner,</p> <p>v.</p> <p>RESPONDENT,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p> <p>Appeal No. 09-2883</p> <p>Account No. #####</p> <p>Case Type: Revocation - Sale Tax License and Withholding Tax License</p> <p>Judge: Chapman</p>
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Presiding:

Michael J. Cragun, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP 1, Assistant Attorney General
PETITIONER REP 2, from Taxpayer Services Division
For Respondent: RESPONDENT REP, Owner

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 4, 2010. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. This matter is before the Utah State Tax Commission due to Taxpayer Services Division's (the "Division") September 23, 2009 request to revoke the sales and use tax license and withholding tax license of RESPONDENT (the "taxpayer"). The Division requests revocation of the taxpayer's licenses on the grounds that the taxpayer has failed to comply with Utah laws that pertain to remitting and reporting both sales and use tax and withholding tax.

2. The taxpayer's account number is #####.

3. The taxpayer has filed all of its sales and use tax returns except those for the 2nd and 3rd Quarters of 2009. The taxpayer has filed all of its withholding tax returns. However, the taxpayer owes both delinquent sales and use tax and delinquent withholding tax.

4. Since the 2nd Quarter of 2006, the taxpayer has not paid any of its sales and use taxes except for a partial payment for the 1st Quarter of 2008, which resulted from a garnishment. In addition, the taxpayer has not paid any prepared food tax, which is also reported on the sales and use tax return, since the 2nd Quarter of 2006. Exhibit P-2. As of the date of the Formal Hearing, the taxpayer owes approximately \$\$\$\$ in delinquent sales and use tax and prepared food tax. Exhibit P-1.

5. The taxpayer has paid all of its withholding tax liabilities except for a portion of its liability for the 4th Quarter of 2006. Exhibit P-2. As of the date of the Formal Hearing, the taxpayer owes approximately \$\$\$\$ in delinquent withholding tax. Exhibit P-1.

6. The Division explains that most of the taxpayer's sales and use tax returns for 2006, 2007 and 2008 had been delinquent until May 2009, when the Division was able to speak with the taxpayer. The Division also states that the taxpayer has generally been difficult to reach and has reneged on several payment plans that have been set up for it to pay its delinquency. On the basis of the delinquent amounts currently due and the taxpayer's compliance history, the Division asks the Commission to revoke both the taxpayer's sales and use tax license and its withholding tax license.

7. RESPONDENT REP explains that his former wife used to handle the taxpayer's books and file and pay the taxes due. RESPONDENT REP and his former wife separated in September 2007 and divorced in September 2009. RESPONDENT REP claims that after the separation, he discovered that his former wife had not been filing and paying the business's tax obligations. He explains that now that the divorce is finalized and now that his former wife has agreed to have her name removed from the business, he can consider entering into a payment plan to pay off the delinquent taxes. He also states that he should know

within three or four months if the business will generate enough income for him to pay the delinquent amounts.

For these reasons, RESPONDENT REP asks the Commission to give him more time to set up a payment plan and pay off the delinquencies instead of revoking the business's licenses.

APPLICABLE LAW

1. Pursuant to Utah Code Ann. §59-12-107(3) and UCA §59-12-108, the Utah Sales and Use Tax Act provides that a seller shall remit the sales or use tax imposed by statute to and file sales tax returns with the Tax Commission. Furthermore, UCA §59-12-106(2)(h)(i) provides that “[t]he commission shall, on a reasonable notice and after a hearing, revoke the license of any licensee violating any provision of this chapter.” Subsection 59-12-106(2)(i) provides that “[a]ny person required to collect a tax under this chapter within the state without having secured a license to do so is guilty of a criminal violation as provided in Section 59-1-401.”

2. Pursuant to UCA §59-10-406(1)(a), the Utah Individual Income Tax Act provides that “[e]ach employer shall . . . pay to the commission the amount required to be deducted and withheld from wages paid to any employee . . .” Furthermore, Subsection 59-10-406(2) provides that “[e]ach employer shall file a return, in a form the commission prescribes, with each payment of the amount deducted and withheld under this part” If the withholding tax is neither paid nor reported, UCA §59-10-405.5(7)(a) provides that “[t]he commission shall revoke a [withholding tax] license under this section if: (i) a licensee violates any provision of this part; and (ii) before the commission revokes the license the commission provides the licensee: (A) reasonable notice; and (B) a hearing.”

DISCUSSION

The taxpayer has not complied with all duties associated with having a sales and use tax license or a withholding tax license. The taxpayer has failed to remit almost all of the sales and use tax and prepared food tax that it has collected since mid-2006. In addition, the amount of the taxpayer's sales and use

tax and prepared food tax delinquency is significant, in excess of \$\$\$\$\$. As a result, sufficient cause exists to revoke the taxpayer's sales and use tax license.

In regards to the taxpayer's withholding tax license, the taxpayer has reported and paid all of its withholding tax liability except for a portion due for the 4th Quarter of 2006. The Commission would not normally revoke a license based on a relatively small delinquency for one quarter, especially when the taxpayer has been fully compliant for three years. However, when the taxpayer's history for all taxes is considered, a pattern of delinquency exists, as well as a failure to communicate with the Division. Under these circumstances, sufficient cause exists to also revoke the taxpayer's withholding tax license.

RESPONDENT REP's divorce and his relationship with his former wife do not excuse him from filing returns and paying the taxpayer's tax liabilities, especially for those periods since he took over these functions. In addition, the circumstance do not excuse him from failing to honor payment plans worked out with the Division in the past and from contacting the Division in the months since it filed its revocation request to propose a final settlement plan. Sufficient reasons are not shown to allow the taxpayer to retain its tax licenses for any additional time for RESPONDENT REP to try now to resolve these issues.

CONCLUSIONS OF LAW

1. The taxpayer has received reasonable notice and a hearing concerning the Division's request to revoke its sales and use tax license and its withholding tax license.

2. The taxpayer has failed to comply with its duty to remit sales and use taxes and prepared food taxes. Accordingly, sufficient cause exists to revoke the taxpayer's sales and use tax license.

3. The taxpayer has failed to comply with its duty to remit all of its withholding taxes. Accordingly, sufficient cause exists to revoke the taxpayer's withholding tax license.

Appeal No. 09-2883

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission revokes the sales and use tax license and the withholding tax license issued to the taxpayer for account number #####. It is so ordered.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. 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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