

15-1877
TAX TYPE: TAX LICENSE DENIAL
TAX YEAR: 2015
DATE SIGNED: 1-8-2016
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, vs. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 15-1877</p> <p>Account No. #####</p> <p>Tax Type: Tax License Denial</p> <p>Tax Year: 2015</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Member, TAXPAYER
For Respondent: RESPONDENT, Tax Compliance Agent

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on December 17, 2015 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (the “Taxpayer”) is appealing the Taxpayer Services Division’s (the “Division’s”) denial of its Sales and Use Tax License. After issuing a notice to the Taxpayer on September 29, 2015 notifying it that a bond would be required, which the Taxpayer failed to obtain, the Division denied the tax license by letter dated November 17, 2015. The Taxpayer has appealed this denial and the matter proceeded to the hearing.

APPLICABLE LAW

Utah law requires those businesses that are required to collect sales tax to obtain a sales tax license. Utah Code Sec. 59-12-106(2) provides the following pertaining to the sales tax license:

(a) It is unlawful for any person required to collect a tax under this chapter to engage in business within the state without first having obtained a license to do so.

. . .
(d) The commission shall review an application and determine whether the applicant: (i) meets the requirements of this section to be issued a license; and (ii) is required to post a bond with the commission in accordance with Subsections (2)(e) and (f) before the applicant may be issued a license.

(e)(i) An applicant shall post a bond with the commission before the commission may issue the applicant a license if: . . . (B) there is a delinquency in paying a tax under this chapter for: (I) the applicant; (II) a fiduciary of the applicant; or (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this chapter;

. . .
(f)(ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the amount of a bond required by Subsection (2)(e) on the basis of: (A) commission estimates of: (I) an applicant's tax liability under this chapter, or (II) a licensee's tax liability under this chapter; and (B) any amount of a delinquency described in Subsection (2)(f)(iii).

(f)(iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection (2)(f)(ii)(B): (A) for an applicant, the amount of the delinquency is the sum of: . . . (II) the amount of tax that any of the following owe under this chapter: (Aa) the applicant; (Bb) a fiduciary of the applicant; and (Cc) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this chapter; . . .

DISCUSSION

At the hearing, the representative for the Taxpayer explained that he and two partners had set up the Taxpayer as a limited liability company for the purpose of raising money for an organization that rescues children from slavery. Taxpayer was selling a food product. He states that he was not aware of all the sales tax implications and did not understand why the license was denied. He also noted that he had put the wrong address on the application form so he had not received some of the information from the Division. It was his request for leniency on the license process.

The representative for the Division explained that once the application for license was reviewed, it was determined that one of the three partners of the Taxpayer was the principal in a different business and that business was delinquent in its tax account. Because this one partner of

the Taxpayer was a person responsible for the other business's delinquency it was considered to be a delinquency on an associated account. It was because of this delinquency on an associated account that the Division determined the Taxpayer would either have to post a bond or the associated delinquency for the other business would have to be paid. The Division had mailed a letter to the Taxpayer on September 29, 2015, which explained these options to the Taxpayer.

At the hearing, the Division's representative stated that once the Taxpayer posted a bond or the tax liability on the associated account was paid, the Taxpayer could reapply for a license. He explained to the representative for the Taxpayer at the hearing that if the Taxpayer did not want to post the bond, the partner who was the principal in the associated business should call about the associated business's account for information on how much was owed and make arrangements to pay the amount that is past due.

Based on the information provided at the hearing and the applicable law, the Division appropriately requested the bond under Utah Code Sec. 59-12-106(2)(e), pursuant to which a bond is required when a fiduciary or responsible party for the new entity is responsible for a tax liability from a different entity. The bond requirements are set by statute and there is no discretion given to the Commission to disregard the requirements based on a request for leniency. The Taxpayer has not shown under the law why imposition of the bond is improper.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer's appeal. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.
DATED this _____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of 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.