

05-1112
Revocation
Signed 10/06/2005

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER SERVICES DIVISION OF)		
THE UTAH STATE TAX COMMISSION,)	ORDER OF REVOCATION	
)		
Petitioner,)	Appeal No.	05-1112
)		
v.)	Account No.	#####
)		
RESPONDENT,)	Tax Type:	Withholding Tax License Revocation
)		
Respondent.)	Presiding:	Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on September 27, 2005.

At issue is the Division's August 8, 2005 Request for Revocation of Withholding Tax License No. #####. The Division requests revocation of the Respondent's withholding tax license on the grounds that Respondent has failed to comply with the Utah laws pertaining to this tax. The Division contends that the Respondent has made very few payments towards its withholding tax liability in the last two years and has not filed returns since December 2004.

For the Respondent, RESPONDENT REPRESENTATIVE explains that the company ceased business on June 1, 2005 and is in the process of being dissolved. He contends, however, that the Respondent has filed withholding tax returns for all periods for which withholding tax was due. Nevertheless, he admits that the Respondent has not paid the withholding tax due for many prior periods in the last two years, including

the April 2005 period that was due on May 31, 2005 and the May 2005 period that was due on June 30, 2005. Because the Respondent is being dissolved and in the process of paying its liabilities to all creditors, he does not believe there is a need for revocation of the license at issue.

The Division counters that it did not receive the returns that the Respondent claims to have filed. Furthermore, the Division asks the Commission to revoke the license at issue because revocation creates certain guarantees in the future that, before RESPONDENT REPRESENTATIVE may receive a license for another company, the Respondent's liabilities are paid.

APPLICABLE LAW

The Individual Income Tax Act provides, pursuant to UCA §59-10-406(1)(a), 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

There is a question whether or not the Respondent has filed the withholding tax returns due for periods for which tax was withheld. Nevertheless, there is no question that the Respondent has failed to remit withholding tax withheld for many periods in the last two years. Although the Commission acknowledges that the Respondent has ceased operations and steps are being taken to dissolve the company, the Respondent has not shown that the returns at issue have been filed and it has yet to make recent payments toward the

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delinquent amount due. The Respondent's noncompliance and the delinquencies have remained in effect subsequent to the enactment of Senate Bill 170, which provides for the revocation of withholding tax licenses. As a result, the Tax Commission finds that the Respondent has violated the provisions of the Individual Income Tax Act. Furthermore, the Commission finds that the Respondent has been given reasonable notice and a hearing concerning the revocation of it license. For these reasons, the Commission finds sufficient cause to revoke Withholding Tax License No. #####.

DECISION AND ORDER

The Respondent has violated the provisions of the Individual Income Tax Act, as it relates to its withholding tax license. Based on the foregoing, the Utah State Tax Commission hereby revokes Withholding Tax License No. ##### for failure to comply with Utah law. 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 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

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2005.

Kerry R. Chapman
Administrative Law Judge

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BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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