

06-0033
Revocation
Signed 02/21/2006

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER SERVICES DIVISION OF)		
THE UTAH STATE TAX COMMISSION,)	ORDER OF REVOCATION	
)		
Petitioner,)	Appeal No.	06-0033
)		
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
 PETITIONER REPRESENTATIVE 3, from Taxpayer Services Division
For Respondent: RESPONDENT REPRESENTATIVE, from PETITIONER

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 February 15, 2006.

At issue is the Taxpayer Services Division's January 18, 2006 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 explains that the Respondent has filed very few withholding tax returns and made very few payments of withholding tax in a timely manner. The Division specifies that all returns and payments for the 2005 tax year were late, but points out that the Respondent has recently submitted returns for first three quarters of 2005 and remitted the amounts due for these periods. However, the return and payment for the fourth quarter of 2005 remain delinquent. Furthermore, for those payments made for periods prior to 2005, the Division states that it had to take collection steps, such as garnishments and till taps, to receive the payments. Because of the

Respondent's history of compliance, the Division requests that the Commission revoke the Respondent's withholding tax license so that the Respondent must post a bond prior to having it reinstated.

The Respondent explains that he has begun to take steps to comply by filing returns and paying the tax due for the first three quarters of 2005. RESPONDENT REPRESENTATIVE also states that his accountant is currently working on the return for the fourth quarter of 2005. He also explains that the company is a small business that has experienced difficult times and admits that he has been negligent in complying with the tax responsibilities. However, he believes that the company is now in a sufficient financial position to comply with Utah law in the future.

APPLICABLE LAW

Senate Bill 170, as enacted by the 2005 Utah State Legislature, provided the Commission with authority to revoke an entity's withholding tax license, effective May 2005. 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

Although the Respondent was required to file quarterly withholding tax returns, it has failed to do so in a timely manner for the past several years. Furthermore, although it appears that most of the

Respondent's tax liabilities have eventually been paid, the Respondent has rarely, if ever, remitted the taxes in a timely manner. The Division has had to take extraordinary steps to collect the amounts of tax that have become due. Furthermore, a delinquency of (X) remains outstanding.

The Commission acknowledges that the Respondent has recently begun to take steps to rectify his prior noncompliance by filing returns for prior periods and portions of its delinquent tax amounts. In fact, it appears the Respondent has paid a significant portion of his tax liability and may have the ability to pay future liabilities. However, these recent efforts appear to be a result of the Division's request for a revocation of his license. The Commission is not yet convinced that the Petitioner will comply with Utah law concerning his tax responsibilities.

Senate Bill 170 authorized the Commission to revoke a withholding tax license effective May 2005. The Commission has previously determined that if a taxpayer was in noncompliance for periods occurring after the law became effective, it had the authority to revoke a withholding tax license. Subsequent to May 2005, all of the Petitioner's tax returns and tax payments law have been delinquent. 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 this license. For these reasons, the Commission finds sufficient cause to revoke Withholding Tax License No. #####.

However, the Commission has the authority to reconsider this decision in a Formal Hearing if the Respondent files a written request for such a proceeding. Although the Commission does not guarantee a reversal of the decision, the Petitioner's actions between now and the future hearing, such as submitting all past returns, paying its delinquent tax liabilities, and timely complying with its interim tax responsibilities, would be examined to reevaluate the Respondent's willingness and ability to comply with its responsibilities.

DECISION AND ORDER

The Respondent has violated the provisions of the Individual Income Tax Act, as it relates to his 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 _____, 2006.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 06-0033

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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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