

06-0074  
Revocation  
Signed 09/11/2006

BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
	)	<b>AND FINAL ORDER OF REVOCATION</b>
Petitioner,	)	
	)	
v.	)	Appeal No. 06-0074
	)	Account No. #####
	)	Tax Type: Sales Tax-Bond
	)	
RESPONDENT,	)	Judge: Phan
	)	
Respondent.	)	

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**Presiding:**

D'Arcy Dixon Pignanelli  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE 1, Assistant Attorney General  
PETITIONER REPRESENTATIVE 2, Tax Compliance Agent  
For Respondent: RESPONDENT

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 17, 2006. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The only issue before the Tax Commission at the Formal Hearing was whether Respondent should be required to post a bond under Utah Code Sec. 59-10-405.5(6) or 59-12-106(2)(e)(2) to assure payment of sales and withholding tax. Petitioner asks that Respondent be required to post one \$25,000 bond.

2. Although the tax deficiency amount has remained relatively small, Respondent has exhibited a pattern of late filing and late payment of sales tax returns since at least the third quarter of 2001 and continues to the present. During this period the amount of deficiency did not get higher than \$\$\$\$.

Respondent would pay down the deficiency after collection efforts on the part of Petitioner, but the account generally indicated a balance. Most recently Petitioner had filed an action to revoke Respondent's sales tax license. A Formal Hearing had been scheduled on June 29, 2006, regarding the license revocation. At the hearing Respondent paid the sales tax account balance in full. However, subsequently he was again late with the filing and payment for the second quarter of 2006.

3. Petitioner asks that Respondent be required to post a bond pointing to the significant amount of time and effort expended to collect the sales and withholding taxes due on the account. Petitioner has set up five payment agreements with Respondent that Respondent has broken. Petitioner has sent numerous letters regarding the deficiency to Respondent. There were two bank account garnishments. Petitioner had also attempted a till tap and the collection agent personally visited the business on at least one occasion. Although Respondent would pay some of the deficiency as a result of Petitioner's efforts, the account would never remain current. Eventually Petitioner filed the revocation action, which did result in payment in full until the very next quarter's sales taxes were due. Respondent did file and pay the second quarter 2006 taxes, but they were late.

4. In addition to the history on the current account, Petitioner points out that Respondent had a previous account from 1979 through 1986, which incurred a sales and withholding tax liability of over \$\$\$\$\$. This previous account balance was written off as uncollectable. Respondent obtained another sales tax account from 1993 through 1996 and there was a small amount, \$\$\$\$\$, of unpaid liability on that account.

5. Respondent argues that the tax compliance agents had been inflexible and difficult to work with. He indicates that there was a couple of times when he needed an extension for a few days on a payment agreement, due to a death in the family or other difficult personal circumstance and was not granted one by the Tax Compliance Agent assigned to the account. He states he would then have to contact the Assistant Director, ( X ), for an extension. He also was upset that the Tax Compliance Agent had visited his

business when he was not there and spoke with employees about unpaid taxes. He indicates that he now has a payroll service that is filing and paying the withholding tax so it should be timely. He states that he will file and pay the sales tax on time. Respondent acknowledged that he was late filing and paying the sales tax for the second quarter of 2006 and indicated this occurred because he was out of town.

6. During the past several years, Respondent's combined sales tax and withholding tax amounts claimed on the returns were generally less than \$\$\$\$ per quarter. Once a bond is required, the minimum amount of the bond is \$25,000.

7. The account history clearly shows a pattern of failure to comply timely with the tax laws and compliance only after significant collection efforts have been expended on the part of Petitioner.

#### APPLICABLE LAW

##### 1. Withholding Tax Bond Provisions

If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to: (i) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsection (6); . . . (Utah Code Sec. 59-10-405.5(5)(b).)

(b) Except as provided in Subsection (6)(d), the commission shall calculate the amount of a bond required by Subsection (5) on the basis of: (i) commission estimates of: . . . (B) for a licenses, any amount the licensee withholds, reports, or remits under this part; . . . and (ii) any amount of a delinquency described in subsection (6)(c) . . . (ii) for a licensee, the amount of the delinquency is the sum of: (A) the amount of the delinquency that serves as a basis for revoking the license under this section . . . or (B) The amount that any of the following owe under this part; . . . (d) Notwithstanding Subsection (6)(b)(c), a bond required by Subsection (5) may not: (i) be less than \$25,000. . . (Utah Code Sec. 59-10-405.5(6).)

##### 2. Sales Tax Bond Provisions

If the commission determines it is necessary to ensure compliance with this chapter, the commission may require a licensee to: (A) . . . post a bond with the commission in accordance with Subsection (2)(f) . (Utah Code Sec. 59-12-106(2)(e)(ii).)

(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: . . .(II) a licensee’s tax liability under this chapter; and (B) any amount of a delinquency described in Subsection (2)(f)(iii) . . . (B) for a licensee, the amount of the delinquency is the sum of (I) the amount of any delinquency that served as a basis for revoking the license . . . or (II) the amount of tax that any of the following owe under this chapter; . . . (iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection (2)(e) may not: (A) be less than \$25,000 . . . (Utah Code Section 59-12-106(2)(f).)

CONCLUSIONS OF LAW

Upon review of the relevant statutes, they do indicate that the Commission “may” require a bond if the Tax Commission determines it is necessary to ensure compliance with the provisions of the Sales and Use Tax Act and withholding tax provisions. See Utah Code Sec. 59-12-106 and Utah Code Sec. 59-10-405.5. Respondent’s account clearly indicates a long history of poor or slow compliance. However, in looking at the statutory provisions they provide that the calculation of the amount of the bond is to be based on the deficiency on the account or relating to a prior revocation. This appears to contemplate there would be an amount of tax that Respondent would owe or a prior revocation of a license. In this matter Petitioner had indicated twenty years ago a debt had been written off as uncollectable for Respondent. If written off this would be an amount that Respondent no longer owed. Additionally it is so far prior to the period at issue, and the adoption of the legislation providing for a bond, as to not be relevant. There was a minimal amount owed, some \$\$\$\$\$, from an account closed 10 years ago, again prior to the current legislation and hardly in an amount that would justify a \$25,000 bond.

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There is no deficiency on the current account. Regardless of the fact that the bond amount was intended to be generally calculated based on deficiency, Petitioner asks that a minimum bond be required. The Commission notes that the minimum bond amount is more than several years' taxes for this business. If Respondent fails to make payments timely, Petitioner could file another revocation action and have the licenses revoked within a period of a few month's time. The amount of the minimum bond substantially exceeds the risk of collection in this matter.

DECISION AND ORDER

Based upon the foregoing, Petitioner's request to require Respondent to post a bond is hereby denied. It is so ordered. Petitioner may, however, file a new revocation action should Respondent's account again become delinquent. Respondent needs to file and pay the taxes on a timely basis. Failure to do so will continue to result in penalties, interest and collection actions including revocation proceedings as well as liens, garnishments and compliance agents contacting the business regarding the taxes.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Jane Phan  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

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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

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
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 Sec. 63-46b-13. 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 Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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