
BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER SERVICES DIVISION OF THE
UTAH STATE TAX COMMISSION,

Petitioner,

vs.

RESPONDENT,

Respondent.

**ORDER DENYING RESPONDENT'S
REQUEST FOR RECONSIDERATION**

Appeal No. 07-1374

Account No. ##### - 1 and ##### - 2

Tax Type: Revocation of Sales &
Withholding Licenses

Judge: Marshall

STATEMENT OF CASE

This matter came before the Utah State Tax Commission upon a Request for Reconsideration, dated November 18, 2009, filed by Respondent as a result of the Commission's Order of Revocation, dated October 28, 2009.

APPLICABLE LAW

Utah Code Ann. §63G-4-302 allows for reconsideration of a Commission decision, as follows in pertinent part:

- (1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

Utah Code Ann. §63G-4-403 (2009)¹.

Utah Administrative Rule R861-1A-29 provides additional guidance on requests for reconsideration, below in relevant part:

- (2) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

¹ This code section was renumbered in 2008, previously this section was found at Utah Code Ann. §63-46b-13.

Utah Admin. Code. R861-1A-29 (2009).

Rule 6 of the Utah Rules of Civil Procedure provides for an additional three days to be added to a time period in the event notice is served by mail:

- (e) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the end of the prescribed period as calculated under subsection (a). Saturdays, Sundays and legal holidays shall be included in the computation of any 3-day period under this subsection, except that if the last day of the 3-day period is a Saturday, a Sunday, or a legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or a legal holiday.

U.R.C.P. 6(e) (2009).

DISCUSSION

Petitioner filed a Request to Revoke Respondent's sales and withholding tax licenses on October 26, 2007. On June 23, 2008, the Commission issued a Formal Hearing Order whereby the revocation would be held in abeyance as long as Respondent made specified payments toward the tax delinquency and remained current on his tax filings. The Formal Hearing Order provided that in the event Respondent failed to meet these conditions and upon the submission of an affidavit by Petitioner, the licenses would be revoked without further hearing. September 8, 2009, Petitioner submitted an Affidavit of PERSON A. PERSON A's sworn statements indicate that Respondent failed to comply with the terms of the Stipulation. An Order to Show Cause was issued on September 28, 2009, ordering Respondent to show cause why the license should not be revoked. Respondent's Response was received October 14, 2009. The Commission issued an Order of Revocation on October 28, 2009, finding that the Respondent was not in compliance with the June 23, 2008 Formal Hearing Order. The Respondent submitted its Request for Reconsideration via facsimile on November 18, 2009. The original was sent via first class mail, and had a November 19, 2008 postmark.

Utah Code Ann. §63G-4-302 provides that a party may request reconsideration of an order that would otherwise constitute a final agency action within 20 days after that order is issued. The Commission issued the Order of Revocation on October 28, 2009. The Respondent did not file its request for reconsideration until November 18, 2009; twenty-one days after the Order of Revocation was issued. The Commission finds the Respondent's Request for Reconsideration is untimely.

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The Commission has considered whether Rule 6(e) of the Utah Rules of Civil Procedure is applicable in this matter, and finds that it is not. Rule 6(e) would give a three-day extension on the twenty-day filing deadline. The Court of Appeals held in *(X), Inc. v. The Industrial Comm'n of Utah*, 860 P.2d 944, 949 (1993), that Rule 6(e) did not apply to extend the time to file an appeal under Utah Code Ann. §63-46b-12(1)(a)². The Court held “That rule provides: ‘Whenever a party...is required to do some act...*within a prescribed period after the service of a notice...* upon him and the notice...is served by mail, 3 days shall be added to the prescribed period.’ Utah R. Civ. P. 6(e) (emphasis added). That rule must be read in light of Section 63-46b-12(1)(a) of UAPA which requires a part to appeal thirty days after the issuance of the administrative ruling. Thus, Rule 6(e) does not apply because under section 63-46b-12(1)(a) of UAPA, the time for appeal runs from the issuance of an order not from the service of an order on a party.” Like the statute at issue in *(X)*, the time to appeal runs from the issuance of an order under Utah Code Ann. §63G-4-302. This is consistent with the Court of Appeals finding in *Blauer v. Department of Workforce Services*, 167 P.3d 1102, 1103 (2007). In *Blauer*, the Court specifically found that the Career Service Review Board’s correctly denied a request for reconsideration on the ground that it was untimely when it was filed twenty-two days after the issuance of the final order.

DECISION AND ORDER

Based upon the foregoing, the Commission denies the Respondent’s Request for Reconsideration. 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: You have thirty (30) days after the date of this order to pursue judicial review of this order pursuant to Utah Code Ann. §§59-1-601 et seq. and 63G-4-403 et seq.

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² Utah Code Ann. §63-46b-12(1)(a) has been renumbered as Utah Code Ann. §63G-4-301.