

08-1023
PERSONAL PENALTY
TAX YEAR: 2007
SIGNED: 06-08-2011

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>ORDER OF DEFAULT</p> <p>Appeal No. 08-1023</p> <p>Account No. #####</p> <p>Tax Type: Personal Penalty/Sales Tax</p> <p>Tax Year: 2007</p> <p>Judge: Marshall</p>
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Presiding:

D'Arcy Dixon Pignanelli, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For the Petitioner: No one appeared
For the Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Taxpayer Services Division
RESPONDENT REP. 3, Taxpayer Services Division
RESPONDENT REP. 4, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Commission for a Formal Hearing on November 30, 2010. Petitioner ("Taxpayer") was duly notified of the date, time, and place for the hearing, and provided with instructions on how to appear by phone. Taxpayer failed to appear.

APPLICABLE LAW

An initial hearing decision becomes final after thirty days, unless a party requests a formal hearing, as provided in Administrative Rule R861-1A-29, below in pertinent part:

- (1) Decisions and Orders.
 - (a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.
 - (iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing. The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the Tax Commission.

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Default may be entered against a party as provided in Utah Code Ann. §63G-4-209, as follows in relevant part:

- (1) The presiding officer may enter an order of default against a party if...
 - (b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or
- (2) An order of default shall include a statement of the grounds for default and shall be mailed to all parties...
- (4) (b) In an adjudicative proceeding that has no parties other than the agency and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

DISCUSSION

The Commission issued an Initial Hearing Order in this matter on September 1, 2009. On September 29, 2009, the Commission received the Respondent's ("Division") timely-filed request for a formal hearing. The matter was stayed pending a Bankruptcy Petition filed by the Taxpayer, and was subsequently scheduled for a formal hearing on November 30, 2010. The Taxpayer did not appear at the hearing. An effort was made to reach the Taxpayer by telephone, but the phone number on record with the Commission did not work. In accordance with Utah Code Ann. §63G-4-209, the appeal should be dismissed. As a formal hearing was timely requested, under Rule R861-1A-29 the September 1, 2009 Initial Hearing Order did not become the final order of the Commission.

ORDER

Based upon the foregoing, the Commission hereby enters its Order of Default against the Taxpayer and dismisses the appeal. It is so ordered.

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice of Appeal Rights and Payment Requirements: Failure to pay the balance due within thirty days of the date of this order may result in a late payment penalty. A default is a failure to exhaust administrative remedies, which precludes further judicial review under Utah Code Ann. §63G-4-401. A party may file a motion to set aside the default in accordance with Utah Code Ann. §63G-4-209 and the Utah Rules of Civil

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Procedure. Pending an order by the Commission to set aside the default, this matter is closed without further recourse.