

08-2019
REVOCATION
SIGNED 2-25-09

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION,</p> <p>Petitioner,</p> <p>vs.</p> <p>RESPONDENT,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 08-2019</p> <p>Account Nos. #####-1 & #####-2</p> <p>Tax Type: Revocation Sales and Withholding Tax Licenses</p> <p>Judge: Phan</p>
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Presiding:

Pam Hendrickson, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP 1, Attorney at Law
PETITIONER REP 2

For Respondent: RESPONDENT REP 1, Assistant Attorney General
RESPONDENT REP 2, Tax Collection Agent
RESPONDENT REP 3, Supervisor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 10, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. This matter is before the Utah State Tax Commission due to the Request for Revocation of Tax License, filed by Petitioner (the "Division") on October 21, 2008. The Division requests revocation of sales tax license number #####-2 pursuant to Utah Code Sec. 59-12-106(2)(h) on the grounds that Respondent (the "Taxpayer") has failed to comply with the laws of the Utah Sales and Use Tax Act. Additionally the Division requests revocation of withholding tax license number ##### -1 pursuant to Utah Code Sec. 59-10-405(7)(a) on the grounds that the Taxpayer has failed to comply with the withholding tax

provisions.

2. As of the day of the hearing, the Taxpayer owed \$\$\$\$\$.16 in sales tax, penalties and interest. The tax deficiencies were for periods going back to March of 2007. Although at the time that the Division filed this action there were unfiled returns for many of the periods, as of the date of the hearing all returns had been filed and this deficiency was based on the declared returns. A payment of \$\$\$\$ had been made by the Taxpayer the day prior to the hearing, which had been subtracted from the balance.

3. As of the date of the hearing the Taxpayer owned \$\$\$\$ in withholding tax, penalties and interest.

4. The Division's witness RESPONDENT REP 2, Tax Compliance Agent, testified that she had been assigned to the account for collection in 2006. She indicated that since that time she had contacted the Taxpayer about the delinquency and the need to file returns. She also indicates that she set the Taxpayer up on at least three separate payment agreements, and the Taxpayer had failed to follow through. After the three failed agreements the Division determined that the matter should proceed to revocation.

5. At the hearing the Taxpayer explained that he had started the restaurant in 2000. The restaurant had been doing well until 2007 when sales dropped off due to financial issues including the increase in gas prices. Prior to 2007 he had an accountant keeping the books and doing the tax returns. After 2007, the Taxpayer started doing the accounting work himself, because he could no longer afford the accountant. He acknowledged that he had made monthly payment agreements, but indicated he was unable to pay them due to the decrease in sales. One reason that a set monthly payment plan had been difficult for the Taxpayer to meet was the seasonal nature of the business. He testified that the winter months were the best months for the restaurant, and then the two months July and August were generally good, for the rest of the year it was very slow in CITY.

6. The Taxpayer stated that he had lost his liquor license on December 1, 2008. He said that liquor accounted for nearly half of his sales. It was his testimony that he could repay the sales tax delinquency much faster if he had his liquor license. However, without the license he indicated that he could pay \$\$\$\$ per month toward the past due tax balance even in the slow months and keep current on the taxes as they became due. His representative also pointed out that he would have been better able to pay the tax as they became due if he was a monthly filer, instead of quarterly filer. The Taxpayer stated that he would be able to pay additional amounts during the busier months. He also pointed out that he had just recently paid off a "hard

money loan,” which was done through an automatic debit from his daily credit card receipts. The amount of the loan had been around \$\$\$\$ and he indicates he had taken the loan out in May and had paid it off in January 2009. Since he no longer needed to make these payments he felt that he could use this money to pay toward the tax delinquencies.

7. The Division’s representatives indicated that based on the past history they were unwilling to accept another payment plan. They also pointed out that they were unable to accept plans that would take more than two years for the amount to be paid in full. At \$\$\$\$ per month the amount would take longer than the two years, although it was the Division’s position that the Commission has the discretion to accept a payment plan.

APPLICABLE LAW

(i) The commission shall, on a reasonable notice and after a hearing, revoke the license of any licensee violating any provision of this chapter and no license may be issued to such person until the taxpayer has complied with the requirements of this chapter. (ii) A license may not be issued to a licensee described in Subsection (2)(h)(i) until the licensee has complied with the requirements of this chapter . . (Utah Code Sec. 59-12-106(2)(h).)

Any person required to collect a tax under this chapter within this state without having secured a license to do so is guilty of a criminal violation as provided in Section 59-1-401. (Utah Code Sec. 59-12-106(2)(i).)

(a) The commission shall revoke a 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. (b) If the commission revokes a licensee’s license in accordance with Subsection (7)(a), the commission may not issue another license to that licensee until that licensee complies with the requirements of this part, including: (i) paying any: (A) amounts due under this part; (B) penalty as provided in Section 59-1-401; or (C) interest as provided in Section 59-1-402; and (ii) posting a bond in accordance with Subsections (5) and (6). (Utah Code Section 59-10-405.5(7).)

CONCLUSIONS OF LAW

The Taxpayer has substantially failed to comply with provision of the Sales and Use Tax Act and for that reason the Commission has clear grounds to revoke Respondent's sales tax license pursuant to Utah Code Sec. 59-12-106(2) and Respondent’s withholding tax license pursuant to Utah Code Sec. 59-10-

405.5(7).

DECISION AND ORDER

After reviewing the evidence in this matter, the length of time that the account has been delinquent, the amount of the deficiency and the number of payment agreements that the Taxpayer has already broken, it is clear that the Taxpayer is in substantial violation of the sales tax provisions requiring the Commission to revoke the licenses at issue. The Commission does not find cause to enter into another payment agreement with Petitioner and the amount he has indicated he could pay consistently would not pay the balance within a two-year period. The Commission does note that the Taxpayer had demonstrated the ability to obtain and pay off a loan. The Commission will hold the revocation of the license in abeyance for the period of one month from the date of this notice, during this time the Taxpayer may, should he so choose and if he is able, obtain a loan and pay off the tax balance with certified funds in full, including all penalties and accrued interest. If the balance is paid in full the Taxpayer is to submit the receipt or proof of payment to the Appeals Unit, making sure to include the Appeal number on the receipt. If the Appeals Unit does not receive a receipt of other proof of payment in full within in this time period, an order will be issued revoking the license without further proceeding.

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.¹

DATED this ____ day of _____, 2009.

Pam Hendrickson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

DISSENT

We respectfully disagree with our colleagues that the Taxpayer should be allowed an additional thirty days to pay this tax deficiency. The Taxpayer is substantially delinquent; there have been numerous prior attempts by the Division to collect this tax, and payment arrangements with which the Taxpayer failed to comply. The taxes at issue were collected by the Taxpayer from his customers and were not

¹ In instances where there is a tie in the decision between the Commissioners, Utah Code Sec. 59-1-205 provides that the tie be resolved in favor of the Taxpayer. The most favorable decision in this appeal to the Taxpayer is to allow the thirty more days to pay the deficiency and is, therefore, the position that prevails.

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his funds to spend on other expenses. If the Taxpayer was able to obtain a loan to pay off the deficiency, he should have done so prior to this matter proceeding so far into the administrative process. For these reasons we would find that the license should be revoked immediately.

Marc B. Johnson
Commissioner

Bruce Johnson
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. 63G-4-302. 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 Secs. 59-1-601 et seq. and 63G-4-401 et seq.

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