

08-2622
SALES AND WITHHOLDING
TAX YEARS: 2006, 2007, 2008
SIGNED: 01-21-2009
COMMISSIONERS: P. HENDRICKSON, M. JOHNSON, D. DIXON
EXCUSED: R. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Petitioner, v. RESPONDENT, Respondent.	INITIAL HEARING ORDER Appeal No. 08-2622 Account No. #####-1 and #####-2 Tax Type: Sales and Withholding Tax Licenses Tax Year: 03/06 – 08/08 Judge: Marshall
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP. 1, Assistant Attorney General
 PETITIONER REP. 2, Taxpayer Services Division
For Respondent: RESPONDENT REP., RESPONDENT

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 January 6, 2009. The issue before the Commission is the Request for Revocation of Sales Tax License #####-1 and Withholding Tax License #####-2, filed by Petitioner (“Division”) on December 16, 2008. As of the hearing date, Taxpayer’s estimated sales tax liability with penalties and interest was \$\$\$\$\$, prepared food tax liability with penalties and interest was \$\$\$\$\$, and withholding tax liability with penalties and interest was \$\$\$\$\$.

APPLICABLE LAW

Section 59-12-103 of the Utah Code imposes a sales tax on certain transactions, in pertinent part as follows:

- (1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(e) sales of prepared food...

Utah Code Ann. §59-12-103 (2006-2008).

Sellers are required to collect and remit sales tax pursuant to Utah Code Ann. §59-12-107, as follows:

- (1) (a) Except as provided in Subsection (1)(d) or Section 59-12-107.1 and subject to Subsection (1)(e), each seller shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the seller:
- (i) has or utilizes:
 - (A) an office;
 - (B) a distribution house;
 - (C) a sales house;
 - (D) a warehouse;
 - (E) a service enterprise; or
 - (F) a place of business similar to Subsections (1)(a)(i)(A) through (E);
 - (ii) maintains a stock of goods;
 - (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the state, unless the seller's only activity in the state is:
 - (A) advertising; or
 - (B) solicitation by:
 - (I) direct mail;
 - (II) electronic mail;
 - (III) the Internet;
 - (IV) telephone; or
 - (V) a means similar to Subsection (1)(a)(iii)(A) or (B);
 - (iv) regularly engages in the delivery of property in the state other than by:
 - (A) common carrier; or
 - (B) United States mail; or

- (v) Regularly engages in an activity directly related to the leasing or servicing of property located within the state

Utah Code Ann. §59-12-107 (2006-2008).

The Commission is mandated to revoke a sales tax license for violation of any of the provisions of the Sales and Use Tax Act, under Utah Code Ann. §59-12-106, set forth below in pertinent part:

The commission shall, on a reasonable notice and after a hearing, revoke the license of any licenses violating any provisions of this chapter.

Utah Code Ann. §59-12-106 (2006-2008).

An employer is required to withhold from wages an amount determined to pay the income tax imposed by the State of Utah, as set forth in Utah Code Ann. §59-10-402, in pertinent part as follows:

- (1) Each employer making payments of wages shall deduct and withhold from wages and amount to be determined by a commission rule which will, as closely as possible, pay the income tax imposed by this chapter.

Utah Code Ann. §59-10-402 (2006-2008).

Each employer is required to file a return and make payment of the withheld taxes pursuant to Utah Code Ann. §59-10-406, as set forth below in relevant part:

- (1) (a) Each employer shall, on or before the last day of April, July, October, and January, pay to the commission the amount required to be deducted and withheld from wages paid to any employee during the preceding calendar quarter under this part.
- (b) The commission may change the time or period for making reports and payments if:
 - (i) in its opinion, the tax is in jeopardy; or
 - (ii) a different time or period will facilitate the collection and payment of the tax by the employer.
- (2) Each employer shall file a return, in a form the commission prescribes, with each payment of the amount deducted and withheld under this part showing:
 - (a) the total amount of wages paid to his employees;
 - (b) the amount of federal income tax deducted and withheld;

- (c) the amount of tax under this part deducted and withheld;
and
- (d) any other information the commission may require.

Utah Code Ann. §59-10-406 (2006-2008).

The Commission is mandated to revoke a withholding tax license for violations under §59-10-405.5(7) of the Utah Code, as follows:

- (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

Utah Code Ann. §59-10-405.5 (2006-2008).

DISCUSSION

The Division's representative stated that the Taxpayer and the Division have been working toward a stipulation, but due to the large outstanding balance and history of noncompliance, the Division asked the Commission to revoke the Taxpayer's sales and withholding tax licenses. The Taxpayer has delinquencies dating back to March of 2006 for sales and prepared food tax, and the 2007 annual reconciliation for the withholding tax. The Taxpayer has not filed October and November 2008 sales tax returns. The Division has estimated Taxpayer's withholding tax liability since June of 2008. The Division had entered into payment plans in the past, on which the Taxpayer defaulted. In addition, the Division has placed numerous liens on the Taxpayer's property.

Taxpayer's representative acknowledged that there was gross neglect in filing and paying both the sales and withholding tax liabilities. He testified that he was trying to remedy the problem, and working with the Division to set up a payment plan.

The Commission finds that the Taxpayer is delinquent in the filing of returns and payment of both withholding and sales tax. Taxpayer's accounts are substantially delinquent, and have been for a number of years. Taxpayer was given multiple opportunities to correct the deficiencies, and has defaulted on past payment agreements. The Commission finds the Taxpayer has violated the sales and withholding tax laws, and that revocation of its sales and withholding tax licenses is warranted under Utah Code Ann. §59-12-106 and §59-10-405.5.

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission hereby revokes Sales Tax License #####-1 and Withholding Tax License #####-2. 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 _____, 2009.

Jan Marshall
Administrative Law Judge

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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty days from the date of this order may result in a late payment penalty.