

10-2701
REVOCATION
SIGNED: 05-05-2011

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Petitioner, v. RESPONDENT, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION Appeal No. 10-2701 Account No. #####-1 Case Type: Revocation - Sales Tax License and Withholding Tax License Judge: Chapman
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Presiding:

Michael J. Cragun, Commissioner
Kerry R. Chapman, 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 a Formal Hearing on March 14, 2011.

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 Taxpayer Services Division's (the "Division") October 26, 2010 request to revoke RESPONDENT's (the "Respondent" or "taxpayer") Sales Tax License No. #####-2 and Withholding Tax License No. #####-3. The Division requests revocation of the taxpayer's licenses on the grounds that the taxpayer has failed to comply with Utah laws that pertain to remitting and reporting both sales and use tax and withholding tax.

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2. On December 30, 2010, the Commission issued an Initial Hearing Order in this matter. On January 26, 2011, the taxpayer appealed this order and requested a Formal Hearing.

3. The taxpayer has filed all sales and use tax and withholding tax returns.

4. The taxpayer's sales and use tax returns show that the taxpayer has not paid any of its sales and use tax liability since 2005. As of the hearing date, the taxpayer owes \$\$\$\$ in delinquent sales and use tax, penalties, and interest.

5. The taxpayer's withholding tax returns show that the taxpayer owes delinquent withholding tax for periods prior to 2009. As of the hearing date, the taxpayer owes \$\$\$\$ in delinquent withholding tax, penalties, and interest.

6. The taxpayer contends that because its business is a gas station, the state has already received 95% of the taxes generated by the business through fuel taxes. The taxpayer indicates that the business has had financial problems since 2005 resulting in its not paying its tax liability, but that it intends to sell the business, at which time the delinquent taxes can be paid. The taxpayer also indicates that some confusion has existed in the past whether it should file quarterly or monthly returns. Finally, the taxpayer indicates that it would be willing to enter into a payment agreement to pay the delinquent taxes. The taxpayer, however, has not contacted the Division to discuss a possible payment agreement. The taxpayer asks the Commission to allow it to retain its licenses while it is trying to sell the business.

APPLICABLE LAW

1. Pursuant to Utah Code Ann. §59-12-107(3) and UCA §59-12-108, the Utah Sales and Use Tax Act provides that a seller shall remit the sales or use tax imposed by statute to and file sales tax returns with the Tax Commission. Furthermore, UCA §59-12-106(2)(h)(i) provides that "[t]he commission shall, on a reasonable notice and after a hearing, revoke the license of any licensee violating any provision of this chapter." Subsection 59-12-106(2)(h) provides that "[a]ny person required to collect a tax under this chapter

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within the state without having secured a license to do so is guilty of a criminal violation as provided in Section 59-1-401.”

2. Pursuant to UCA §59-10-406(1)(a), the Utah Individual Income Tax Act provides that “[e]ach employer shall . . . pay to the commission the amount required to be deducted and withheld from wages paid to any employee . . .” Furthermore, Subsection 59-10-406(2) provides that “[e]ach employer shall file a return, in a form the commission prescribes, with each payment of the amount deducted and withheld under this part” If the withholding tax is neither paid nor reported, UCA §59-10-405.5(7)(a) provides that “[t]he commission shall revoke a [withholding tax] 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.”

CONCLUSIONS OF LAW

1. The taxpayer has received reasonable notice and a hearing concerning the Division’s request to revoke its sales and use tax license and its withholding tax license.

2. The taxpayer has failed to comply with its duty to remit sales and use taxes and withholding taxes. The taxpayer currently owes \$\$\$\$\$ in delinquent sales and use tax, withholding tax, penalties and interest. Accordingly, sufficient cause exists to revoke the taxpayer’s sales and use tax license and withholding tax license.

3. The taxpayer asks the Commission to allow it to keep its licenses while it tries to sell the business. The taxpayer, however, has not approached the Division in an attempt to set up a schedule to pay the delinquent taxes, even though it has had problems paying its liability for more than five years. The taxpayer has not shown good cause why it should be allowed to retain its licenses.

4. The Commission should revoke the taxpayer’s sales and use tax and withholding tax licenses.

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Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission revokes the taxpayer's Sales Tax License No. #####-2 and its Withholding Tax License No. #####-3. 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: 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 Ann. §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 Ann. §§59-1-601et seq. and 63G-4-401 et seq.

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