

19-1283

TAX TYPE: TAX LICENSE DENIAL

TAX YEAR: NOT APPLICABLE

DATE SIGNED: 06/26/2019

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,

Petitioner,

v.

TAXPAYER SERVICES DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 19-1283

Account No. #####

Tax Type: Tax License Denial

Tax Year: Not Applicable

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Owner¹

For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Assistant Attorney
General
REPRESENTATIVE FOR RESPONDENT-2, Tax Compliance
Manager
REPRESENTATIVE FOR RESPONDENT-3, Tax Compliance
Manager
REPRESENTATIVE FOR RESPONDENT-4, Tax Compliance
Agent

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on June 17, 2019, for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Taxpayer”) is appealing Respondent’s (“Division’s”) denial to issue a tax license to Taxpayer. The Division’s Tax License Denial letter was issued on May 24, 2019, and the Taxpayer filed an appeal of the Division’s decision on that same day. The Taxpayer previously had both sales and withholding

¹ REPRESENTATIVE FOR TAXPAYER attended the hearing in person and brought with him NAME-2 to act as an interpreter. NAME-2 explained that REPRESENTATIVE FOR TAXPAYER did not speak English well and needed an interpreter for this proceeding.

licenses, but those licenses were revoked by order of the Tax Commission on February 1, 2019, after a hearing on a Request for Revocation that was filed by the Division on November 28, 2018.

APPLICABLE LAW

Under Utah law businesses that are required to collect sales tax are required to have a sales tax license. Utah Code Sec. 59-12-106(2) provides the following pertaining to the sales tax license:

- (a) It is unlawful for any person required to collect a tax under this chapter to engage in business within the state without first having obtained a license to do so.
.
- (d) The commission shall review an application and determine whether the applicant: (i) meets the requirements of this section to be issued a license; and (ii) is required to post a bond with the commission in accordance with Subsections (2) (e) and (f) before the applicant may be issued a license.
.
- (e)(i) An applicant shall post a bond with the commission before the commission may issue the applicant a license if: (A) a license under this section was revoked for a delinquency under this chapter for: (I) the applicant; (II) a fiduciary of the applicant; or (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this chapter; or (B) there is a delinquency in paying a tax under this chapter . . .
.
- (f)(ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the amount of a bond required by Subsection (2)(e) on the basis of: (A) commission estimates of: (I) an applicant's tax liability under this chapter, or (II) a licensee's tax liability under this chapter; and (B) any amount of a delinquency described in Subsection (2)(f)(iii).

(iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection (2)(f)(ii)(B): (A) for an applicant, the amount of the delinquency is the sum of: . . . or (II) the amount of tax that any of the following owe under this chapter: (Aa) the applicant; (Bb) a fiduciary of the applicant; and (Cc) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over a tax under this chapter; . . .
.
- (iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection (2)(e) may not: (A) be less than \$25,000; or (B) exceed \$500,000.

- ...
- (h) (i) The commission shall, on a reasonable notice and after a hearing, revoke the license of any licensee violating any provisions of this chapter.
 - (ii) A license may not be issued to a licensee described Subsection (2)(h)(i) until the licensee has complied with the requirements of this chapter, including: (A) paying any: (I) tax due under this chapter; (II) penalty as provided in Section 59-1-401; or (III) interest as provided in Section 59-1-402; and (B) posting a bond in accordance with Subsections (2)(e) and (f).
- (i) 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.

The law at issue regarding withholding tax license provisions is Utah Code Sec. 59-10-405.5 and provides in relevant part:

- (4) The Commission shall review an application and determine whether:
 - (a) the applicant meets the requirements of this section to be issued a license; and
 - (b) a bond is required to be posted with the commission in accordance with Subsections (5) and (6) before the applicant may be issued a license.
 - (5)(a) An applicant shall post a bond with the commission before the commission may issue the applicant a license if:
 - (i) a license under this section was revoked for a delinquency under this part . . .
 - (6)(d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may not:
 - (i) be less than \$25,000; or (ii) exceed \$500,000.
-
- (7)(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).

DISCUSSION

On November 28, 2018, the Division filed a Request for Revocation of Tax Licenses because the Taxpayer was delinquent on payment of sales and withholding tax liabilities. A hearing on the Division's Request for Revocation was held on January 3, 2019. As of the date of the hearing the Taxpayer owed \$\$\$\$ in tax, penalties and interest. The Taxpayer did not appear at the hearing on the Division's Request for Revocation and the Tax Commission issued an order revoking the Taxpayer's sales and withholding licenses on February 1, 2019. The Taxpayer did not appeal and that order became final. On or about April 9, 2019, the Taxpayer submitted an application to obtain new sales and withholding tax licenses. The Division, on May 1, 2019, issued a letter indicating that a bond was required. That letter stated that the Division could not process the "Utah State Business and Tax Registration" noting unpaid tax debt. The letter also stated in part as follows:

What to Do

-In order to complete the registration process:

- You must post a bond for Sales Tax in the amount of \$25,000.00
- You must post a bond for Withholding Tax in the amount of \$25,000.00

The Taxpayer did post a sales tax bond, but did not pay the delinquent sales tax amounts. The Taxpayer did not post a withholding tax bond, and instead paid the withholding tax balance. He said the withholding tax due was only \$\$\$\$\$. He explained through his interpreter that he thought payment of the balance should be sufficient.

The Division did not issue the new licenses. On May 24, 2019 the Division issued its Tax License Denial Letter. This letter stated, "We have denied your request for a license because you did not provide the required bond and you did not resolve your tax debt by May 1, 2019." The Taxpayer timely appealed this denial and it is this denial that is the subject of this hearing.

As of the date of the subject hearing on the Division's Tax License Denial, the Taxpayer still had not paid the balance owing from the prior sales tax license that was revoked by order on February 1, 2019. As of the date of the subject hearing the Taxpayer owed \$\$\$\$ in sales tax, penalties and interest on the revoked account. The Taxpayer had however paid the withholding tax deficiency, thus showing a \$0 balance due for withholding.

The Taxpayer explained through the interpreter that he was unaware of all of the tax law requirements and had not understood the license revocation proceeding. He stated that he had health issues which made it difficult to run his business over the past couple of years. He said if he could be allowed to open his business again he could sell his inventory and would be able to make payments toward the delinquent tax amount. He said he could pay \$\$\$\$ now if he could open the business and he would make payments of \$\$\$\$ per month, or more if business

improved, but he needed to open the business to generate the revenue. He also asked that all the late payment and late filing penalties be waived. He indicated that he had never previously requested waiver of the penalties. The penalty amounts were significant.² He indicated he was incurring a significant monthly expense for rent and utilities of the building even though the business was closed. He requested that the licenses be issued to him right away so he could open the business. The Taxpayer also indicated he did plan on hiring an employee, so would need the withholding license. He said it would cost \$\$\$\$ to \$\$\$\$ and take several weeks of time before he could obtain a bond for the withholding tax. Also, he argued that the bond amount of \$25,000 was very high, compared to the small amount of withholding that he had incurred over the past few years. He states he only had \$\$\$\$ in withholding over the last couple years because he mostly operated the business himself without any employees.

At the hearing, the Division's representative pointed out that because the sales and withholding licenses had previously been revoked, based on Utah law the Taxpayer had to both pay the balance due on the delinquent account and post a bond. It was not sufficient to do one or the other. She cited Utah Code Sec. 59-12-106(2) regarding the sales tax provisions and 59-10-405.5 regarding the withholding provisions. Under Utah Code Sec. 59-12-106(2)(e) the applicant for a license is required to post a bond to obtain a license if the applicant previously had a license revoked for a delinquency. The Taxpayer previously had his sales tax license revoked for a delinquency. It is clear under the express provisions of Utah law that he was required to post a bond to obtain the sales tax license and in addition he is required to pay the tax delinquency before the license may be issued. Utah Code Sec. 59-12-106(2)(h)(ii) expressly provides that the applicant pays any sales tax, penalty and interest due in addition to posting the bond. The law is clear in this matter. Because the sales tax license was revoked, the Division may only issue the license to the Taxpayer if the Taxpayer has both posted the bond and paid the prior tax delinquent amount. There are no statutory provisions allowing the Taxpayer's request to be issued the license now and allow him to make payments towards the prior delinquent amount.

The requirements for a withholding tax license are also clear. They are set out at Utah Code Sec. 59-10-405.5(5)(a) and state that the applicant is required to post a bond if the applicant's withholding license "was revoked for a delinquency under this part." The Taxpayer's

² Under Utah Code Sec. 59-1-401 penalties are imposed for late filing of returns and late payment of taxes. There is a specific process for requesting waiver of penalties and penalties may be waived if a Taxpayer shows reasonable cause. The process and what would constitute reasonable cause are set out at Utah Admin. Rule R861-1A-42. As specifically noted in that rule, a taxpayer may request waiver of penalties only after the total tax amount owed for the period has been paid. What constitutes reasonable cause for waiver of penalties is set out in Subsections R861-1A-42(3) & (4). Financial hardship is not reasonable cause under the rule.

withholding license had been revoked. Regarding the amount of the bond, the statute sets out a formula for determining the bond amount but specifically states at Subsection 59-10-405.5(6)(d) that the amount may not be less than \$25,000. Therefore, if a bond is required, and it is clearly required in this matter, the minimum bond amount is \$25,000. There is no provision that would allow a lesser amount. The withholding provisions also make it clear that once a withholding license has been revoked the applicant has to both pay the tax balance due and post the bond at Utah Code Subsection 59-10-405.5(7)(b).

In situations where the licenses have already been revoked, as occurred in this appeal, the requirements before licenses can again be issued to pay the past due tax amounts and post the bonds are set by statute. There is no discretion given to the Commission to disregard the requirements based on a request for leniency, financial hardship, medical hardship, or that the Taxpayer did not understand the law. The Taxpayer has not shown under the law any basis under which the Division could issue the licenses to the Taxpayer before the Taxpayer has both paid the past due taxes and posted the bonds.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer's appeal. 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, or emailed, 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

or emailed to:
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.