

**STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE OF HEARINGS & APPEALS**

ADMINISTRATIVE DECISION

IN THE MATTER OF

ACCT. NO.:

DOCKET NO.: 19-409

**PROPOSED SALES AND USE
TAX PERMIT REVOCATION**

**DATE ISSUED:
01/13/10**

RAY HOWARD, ADMINISTRATIVE LAW JUDGE

APPEARANCES

This case is before the Office of Hearings and Appeals upon a written protest dated January 10, 2019, submitted by [REDACTED], President & CEO, on behalf of [REDACTED], the Taxpayer. The Taxpayer protested the Notice of Intent to Revoke Permit issued by the Department of Finance and Administration (“Department”) on December 27, 2018. The Letter ID Number is [REDACTED].

A hearing was held in Little Rock, Arkansas, on May 14, 2019, at 12:00 p.m. The Department was represented by Amanda Land, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Present for the Department was Katie McGuirt, Tax Auditor. The Taxpayer’s President & CEO appeared at the hearing. The Taxpayer was represented by [REDACTED], [REDACTED], Attorneys at Law, [REDACTED] (Taxpayer’s Representatives”). Present for the Taxpayer were [REDACTED]

("Taxpayer's, CPA") and [REDACTED] ([REDACTED]). This matter was submitted for a decision on May 22, 2019.¹

ISSUE

Whether the Sales and Use Tax Permit of the Taxpayer should be revoked?
Yes.

FINDINGS OF FACT/CONTENTIONS OF THE PARTIES

The Taxpayer received a Sales and Use Tax Permit from the Department to conduct business within the State of Arkansas. The Taxpayer is subject to the filing and payment requirements of the Arkansas Gross Receipts Tax Act of 1941, Ark. Code Ann. § 26-52-501 et seq. (Repl. 2014 & Supp. 2017).

The Department's Representative filed responses to an Answers to Information Request and stated, in part:

On or about January 13, 2010, [REDACTED] applied for a Sales and Use Tax Permit from the Arkansas Department of Finance and Administration (the "Department") to operate its business at [REDACTED], AR [REDACTED]. The owner was listed as [REDACTED]. See Sales and Use Tax Permit, attached as **Exhibit 1**. [REDACTED], the owner of [REDACTED], executed a Power of Attorney appointing [REDACTED], as its representatives. See Power of Attorney, attached as **Exhibit 2**.

On November 20, 2018, Taxpayer's return and payment for the October 2018 period became due. See October 2018 return, attached as **Exhibit 3**. The return reflected total tax due in the amount of \$ [REDACTED]. Taxpayer failed to remit timely payment. Taxpayer remitted a partial payment of \$ [REDACTED] on January 3, 2019, leaving an outstanding balance of \$ [REDACTED], which consists of \$ [REDACTED] in tax, \$ [REDACTED] in penalty, and \$ [REDACTED] in interest. See Documents reflecting account balance, attached as **Exhibit 4**.

¹ On May 21, 2019, the Department's Representative notified the Office of Hearings and Appeals that requested documentation had been provided to the Taxpayer regarding how penalty and interest are calculated as well as documentation relating to the application of payments. However, on May 22, 2019, an email was received from the Taxpayer's Representatives stating that the Taxpayer has additional questions relating to penalty amounts, interest amounts, and the application of payments.

On or about December 3, 2018, Taxpayer attempted to post a payment of \$ [REDACTED]. The payment was reversed due to NSF-insufficient funds. To date, those funds have not been remitted. See **Exhibit 5**.

On December 20, 2018, Taxpayer's return and payment the November 2018 period became due. See November 2018 return, attached as **Exhibit 6**. The return reflected total tax due in the amount of \$ [REDACTED]. Taxpayer failed to remit any payment. To date, an outstanding balance remains in the amount \$ [REDACTED], which consists of \$ [REDACTED] in tax, \$ [REDACTED] in penalty, and \$ [REDACTED] in interest. See Documents reflecting account balance, attached as **Exhibit 7**.

Based on the foregoing, the Department notified the Taxpayer of its intent to revoke Taxpayer's Sales and Use Tax Permit. The Department sent an Intent to Revoke Permit Letter to Taxpayer on December 27, 2018. See Intent to Revoke Permit Letter, dated December 27, 2018, attached as **Exhibit 8**. Taxpayer protested the Intent to Revoke Permit letter on January 10, 2019. See Protest, attached as **Exhibit 9**. [P. 1-2].

The Tax Auditor presented testimony consistent with the contentions in the Department's Answers to Information Request and she authenticated the Department's Exhibits (1 – 7). The Tax Auditor also testified that: (1) on November 13, 2018, the Taxpayer filed its Sales and Use Tax Return for October of 2018 and indicated sales tax due in the total amount of \$ [REDACTED];² (2) on January 3, 2019, a payment of \$ [REDACTED] was posted to the Taxpayer's account for the period of October 2018 and the balance remains unpaid; (3) on December 7, 2018, the Taxpayer filed its Sales and Use Tax Return for November of 2018 and indicated sales tax due in the total amount of \$ [REDACTED];³ and (4) the Taxpayer has not paid any amount towards the balance due for the period of November 2018.

² See Department Exhibit 3.

³ See Department Exhibit 6.

Upon cross-examination, the Tax Auditor testified that: (1) as reflected on Taxpayer Exhibit D-1, there is no balance due on the Taxpayer's account for the period of December 2018; (2) Page 12 of Taxpayer Exhibit D-2 reflects a balance due for the period of November 2018 in the total amount of \$ [REDACTED]; (3) she does not know how the penalty is calculated (daily, one-time, or monthly); (4) she does not know how interest is calculated; (5) with respect January of 2018 (Page 2 of Taxpayer Exhibit D-2), she does not know how the payment was allocated between tax, penalty, and interest but the 2% discount may have been lost since payment was not timely; and (6) Taxpayer Exhibit D-3 contains information regarding a post-business closure settlement involving the Taxpayer but she cannot determine where the settlement proceeds were applied.⁴

The Taxpayer's Answers to Information Request provided, in pertinent part, as follows:

As a result of a settlement of a Business Closure Notice, the Company paid an additional \$ [REDACTED] in October, 2018 in unpaid sales and use tax. The Company is prepared to work with the sales and use tax auditors at the Department to arrive at a correct assessment for unpaid taxes for the years subject to the earlier audit.

In addition, the contract with the [REDACTED] represents the largest source of income for the Company and is the basis on which most of the sales and use tax assessments have been made. That contract permits [REDACTED] to delay payment for invoices for purchases of supplies for 45 days after the date of the invoice. In addition, the Company has represented to the Department that the third-party payment processor has been substantially delayed in processing payments from [REDACTED] and delivering those to the Company for another 30-45 days. Until the recent receipt of the data from the third-party payment processor, the Company has been unable to demonstrate this significant delay in payment to the Department in order to justify allowing the Company to file its

⁴ The Business Closure Order covered months between November of 2017 and June of 2018.

returns with ATAP based upon when payment for the invoices from [REDACTED] is received rather than the date of the invoice.

This change will benefit the Company by permitting it to make timely payments into its account at ATAP at the time of filing a return ("cash basis") because payments from [REDACTED] will have been received by the Company.

Finally, the Company has been filing and paying sales and use taxes to the Department on a more timely basis since the new accounting firm has been engaged to handle those payments and filings. The Company has been unable to pay all of the tax payments at the time that the returns were filed with ATAP, primarily because of the delay in receiving payments under the contract with [REDACTED]. Allowing the Company to pay the sales tax liability at the time that payments are received from [REDACTED] ("cash basis") will enable the Company to avoid future delays in payment of the sales tax amounts. [P. 3-4].

The Taxpayer's CPA testified that: (1) his firm performs sales tax and payroll services for the Taxpayer; (2) from looking at Taxpayer Exhibit D-2, he cannot definitively determine where the Business Closure settlement proceeds were applied; (3) amounts for penalty and interest for November 2017 – June 2018 (months included in the prior business closure and covered by the settlement agreement) are still reflected on the account; (4) Taxpayer Exhibit D-4 reflects information from the ATAP system regarding the Taxpayer's sales tax liability and indicates the balance for the settlement period of January 2018 – September 2018 is \$ [REDACTED]; and (5) the Taxpayer's cashflow was impacted by the lag time between invoice dates and the dates when payments are received.

Upon cross-examination, the Taxpayer's CPA testified that: (1) the amount of sales tax liability (reflected on Department Exhibit 3) for October of 2018 (\$ [REDACTED]) is correct; (2) the amount of sales tax liability (reflected on Department Exhibit 6) for November of 2018 (\$ [REDACTED]) is correct; (3) a

payment of \$ [REDACTED] was made for the period of October 2018; and (4) no payment has been made for the period of November 2018.

The Taxpayer's President & CEO testified that: (1) the Taxpayer provides office supplies to the [REDACTED] through a partnership with [REDACTED]; (2) the Taxpayer receives a percentage of the sales amounts; (3) the Taxpayer pays sales tax on the accrual method and [REDACTED] sometimes pay later than 45 days; and (4) the Taxpayer's business model is about to change.

CONCLUSIONS OF LAW

Statutory Law

26-18-601. Cancellation or refusal of license or permit. [Effective January 1, 2018.]

(a)(1) The director may cancel or refuse to issue, extend, or reinstate a license, permit, or registration under any state tax law to any person or taxpayer who has within the last three (3) years failed to comply with a state law concerning the timely reporting and payment of a state tax administered by the director or failed to observe or fulfill the conditions upon which the license or permit was issued.

(2) A failure to pay assessed interest and penalties on a delinquent state tax is grounds for a decision to cancel or refuse to issue, extend, or reinstate a license, permit, or registration under this subsection.

Analysis

Ark. Code Ann. § 26-52-501 (Supp. 2017) requires the Taxpayer to file reports and remit tax payments to the Department. Failure to make payments of a state tax administered by the Department is a sufficient basis for cancelling a Sales and Use Tax Permit. See Ark. Code Ann. § 26-18-601(a)(1) (Supp. 2017). The evidence presented in this case supports a finding that the Taxpayer failed to pay its sales tax liability for the months of October 2018⁵ and November 2018.⁶

⁵ Even if the partial payment of \$ [REDACTED] was applied entirely to tax, the Taxpayer's sales tax liability would be \$ [REDACTED].

⁶ The sales tax liability, not including penalty or interest, is \$ [REDACTED].

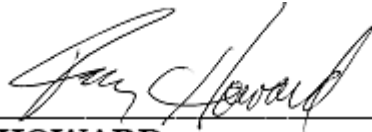
Consequently, the Taxpayer's Sales and Use Tax Permit should be and is hereby revoked under Ark. Code Ann. § 26-18-601 (Supp. 2017).

DECISION AND ORDER

The Sales and Use Tax Permit of the Taxpayer is revoked. The file is to be returned to the appropriate section of the Department for further proceedings in accordance with this Administrative Decision and applicable law. Pursuant to Ark. Code Ann. § 26-18-601(e)(4) (Supp. 2017), unless the Taxpayer requests in writing within twenty (20) days of the mailing of this decision that the Commissioner of Revenues revise the decision of the Administrative Law Judge, this Administrative Decision shall be effective and become the action of the agency. The revision request may be mailed to the Assistant Commissioner of Revenues, P.O. Box 1272, Rm. 2440, Little Rock, Arkansas 72203. A revision request may also be faxed to the Assistant Commissioner of Revenues at (501) 683-1161 or emailed to revision@dfa.arkansas.gov. The Commissioner of Revenues, within twenty (20) days of the mailing of this Administrative Decision, may revise the decision regardless of whether the Taxpayer has requested a revision.

Judicial review of this decision may be obtained by following the requirements of Ark. Code Ann. § 26-18-602 (Repl. 2012).

OFFICE OF HEARINGS & APPEALS



RAY HOWARD
ADMINISTRATIVE LAW JUDGE

DATED: May 28, 2019