

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF )  
**EXXON MOBIL CORPORATION** ) Docket No. **2010-67**  
FROM A DECISION BY THE DEPARTMENT )  
OF REVENUE )

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**ORDER DENYING MOTION TO SET ASIDE DEFAULT**

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THIS MATTER having come before the Board upon the Entry of Appearance and Exxon Mobil Corporation's Motion to Set Aside Default Order and Set New Procedural Schedule, and the Board having considered said Entry and Motion, a response thereto by the Department of Revenue, having reviewed the file herein, and being otherwise advised in the premises, finds as follows:

1. The Rules, Wyoming State Board of Equalization, Chapter 2 § 34(b), provide any party, within ten (10) days of entry, may by motion petition for reconsideration of any Board decision and order. This provision, with its ten (10) day time limit, is, however, not applicable in this matter as the Board has not entered a final decision and order after entry of a default order as provided by Board Rules, Chapter 2 § 21(d).

2. The State Board Rules do not provide a specific procedure for setting aside a default order entered by the Board under Rules, Chapter 2 § 21. The Board, based on this lack of a specific procedure, as well as the fact entry of default orders are rare, and even more rarely challenged, concludes the best interests of both parties in this matter, Exxon Mobil and the Department of Revenue, are best served by reliance, in considering Exxon Mobil's motion, on the provisions of Wyoming Rules of Civil Procedure (WRCP) 55(c) for the setting aside of a default.

3. WRCP 55(c) permits an entry of default to be set aside "[f]or good cause shown." The Wyoming Supreme Court has stated that if the reasons set forth in WRCP 60(b) can not be substantiated, good cause does not exist to set aside an entry of default. *Vanasse v. Ramsay*, 847 P.2d 993 (Wyo. 1993); *M&A Construction Corp. v. Akzo Nobel Coatings, Inc.*, 936 P.2d 451 (Wyo. 1997). The provisions of Rule 60(b) thus become the guideposts for determining whether good cause exists to set aside the Default Order entered in this matter on August 26, 2010.

4. WRCP 60, in subsection (b), sets forth six grounds for relief. The relevant and applicable grounds in this matter, based on Exxon Mobil's Motion, would be one of excusable neglect. WRCP 60(b)(1).

5. The Wyoming Supreme Court, in a 2007 decision, discussed in some detail what might constitute "excusable neglect":

"Excusable neglect is measured on a strict standard to take care of genuine emergency conditions, such as death, sickness, undue delay in the mails and other situations where such behavior might be the act of a reasonably prudent person under the circumstances." *Crossan v. Irrigation Dev. Corp.*, 598 P.2d 812, 813 (Wyo.1979) (citation omitted). Excusable neglect has traditionally [footnote omitted] been found where a party acts in a reasonably prudent manner, but an outside force creates an undue delay, resulting in an untimely filing. *See Bosler*, 555 P.2d at 567 (excusable neglect found where late filing was due to delay in United States Postal mailing system).

*Chevron U.S.A. Inc. v. Department of Revenue*, 2007 WY 62, ¶ 9, 155 P.3d 1041, 1044 (Wyo. 2007). *See also Tusshani v. Allsop*, 1 P.3d 1263, 1265 (Wyo. 2000).

6. Exxon Mobil related the following in support of its request to set aside the Board's August 26, 2010, Default Order:

1. As the result of personnel changes, Exxon Mobil was not aware of the orders issued by the Board in this matter. The Exxon Mobil representative who filed this appeal, Mr. David S. Rogers, left his position with Exxon Mobil's Tax Reporting and Analysis Center shortly after this appeal commenced, and then retired from Exxon Mobil during this case. The orders, notices and filings sent by the Board and Department of Revenue (Department) to Mr. Rogers were not received by his replacement and, as a result, Exxon Mobil did not respond to those orders, notices and filings

2. The chronology of this appeal is as follows:

a. On March 5, 2010, Mr. Rogers filed a case notice/notice of appeal with the Board. Five days later, the Board sent a letter and order to Mr. Rogers acknowledging the appeal and

setting a deadline of April 9 for the filing of Exxon Mobil's preliminary statement.

- b. On April 8, 2010, Mr. Rogers left his position with the Tax Reporting and Analysis Center and joined Exxon Mobil's Property Tax Division. On June 7, 2010, Mr. Rogers announced his retirement from Exxon Mobil. His retirement was effective June 29.
- c. On June 15, 2010, the Board issued a Hearing Order setting dates and deadlines for this case.
- d. On August 9, 2010, the Board held a prehearing conference and issued a Notice of Intent to Enter Default Order. On August 24, the Board held a hearing in this matter and on August 26, the Board issued its Default Order because Exxon Mobil did not make the required filings, or appear at the prehearing conference or hearing.

3. The Board and Department served all of their orders, notices and other documents upon Mr. Rogers at his Tax Reporting & Analysis Center address.

4. Exxon Mobil was not aware of the dates and deadlines in the Board's Hearing Order or Notice of Intent to Enter Default Order, and therefore did not comply with the dates and deadlines in those orders.

5. Exxon Mobil acknowledges that Mr. Rogers would have received the Board's letter and order dated March 5. Exxon Mobil also recognizes that it should have notified the Board and Department of the new contact for this case after Mr. Rogers left his position on April 8. Exxon Mobil is changing its procedure for receipt of mail from the Board and Department to prevent this error in the future.

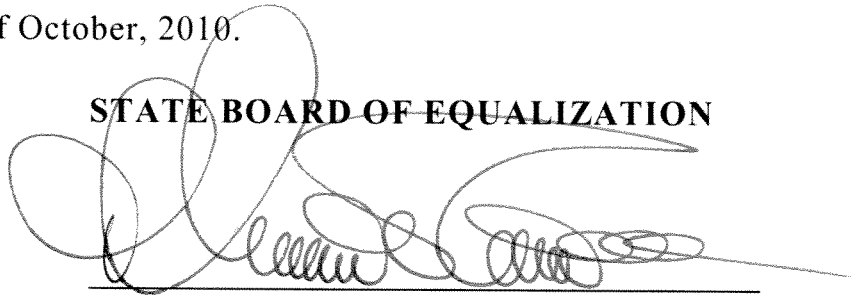
*[Entry of Appearance and Exxon Mobil Corporation's Motion to Set Aside Default Order and Set New Procedural Schedule, pp. 1-2].*

7. It is the conclusion of the Board the information supplied by Exxon Mobil in its Motion does not reflect excusable neglect as defined by the Wyoming Supreme Court. The information reveals no genuine emergency nor the actions of a reasonably prudent person which were subverted by an outside force. Exxon Mobil has not established the excusable neglect necessary to justify setting aside the Board's August 26, 2010, Default Order.

**IT IS THEREFORE ORDERED** the Motion to Set Aside Default Order and Set New Procedural Schedule by Exxon Mobil Corporation shall be, and the same is hereby **denied**.

Dated this 27th day of October, 2010.

**STATE BOARD OF EQUALIZATION**



Thomas D. Roberts, Chairman

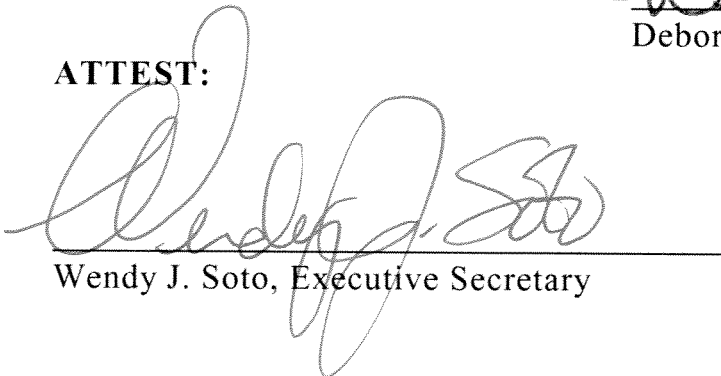


Steven D. Olmstead, Vice-Chairman



Deborah J. Smith, Board Member

**ATTEST:**



Wendy J. Soto, Executive Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2010, I served the foregoing **ORDER DENYING MOTION TO SET ASIDE DEFAULT** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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