

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
VICTOR 321, LLC. FROM A DECISION)	Docket No. 2018-64
BY THE DEPARTMENT OF REVENUE)	
(Use Tax Determination))	

ORDER OF DISMISSAL WITH PREJUDICE

THIS MATTER came before the State Board of Equalization (State Board) on its own motion. On November 27, 2018, the State Board issued notice of its intent to dismiss this appeal as untimely. Petitioner, Victor 321, LLC, objected to dismissal, and the Department of Revenue opposed that objection. Having read the pleadings and being otherwise advised in the premises, the State Board finds, concludes, and orders as follows:

The question before us is whether Victor’s Notice of Appeal was timely. An aggrieved taxpayer may file an appeal with the State Board within 30 days of the Department’s final decision. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006). The Department issued its final decision on October 23, 2018, so the deadline for Victor’s notice of appeal was November 22, 2018. Because that day was a legal holiday, (Thanksgiving) the appeal was due the next working day—November, 23. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(f) (2006). Victor filed its appeal on Monday, November 26, 2018. (Notice of Appeal).

Victor argues that its notice of appeal was timely, contending that November 23 was also a legal holiday, which made its appeal due the following Monday, November 26. Victor supports that contention by noting that both Laramie County and the City of Cheyenne observed November 23 as a holiday. We find that argument unpersuasive. The State Board is an executive branch agency of the State of Wyoming. Wyo. Stat. Ann. § 39-11-102.1 (2017). As such, it observes the legal holidays designated in state statute. Wyo. Stat. Ann. § 8-4-101(a) (2017). The day after Thanksgiving is not so designated. *Id.* The Board further notes that its office was staffed and open for business on November 23, 2018. Accordingly, Victor’s notice of appeal was due no later than November 23. Victor’s notice of appeal, filed on November 26, was untimely and we must dismiss it. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(g) (2006); *In re Chevron USA*, 2004 WL 3675013, at *2, Docket No. 2004-90, (Wyo. State Bd. of Equalization, August 16, 2004) (“The use of mandatory language in the Rules eliminates the Board’s discretion to ignore the stated deadlines. *See Russell v. State ex rel Wyo. Workers’ Safety and Comp. Div.*, 944 P.2d 1151 (Wyo. 1997)”).

NOW, THEREFORE, IT IS ORDERED this matter is **dismissed with prejudice**.

Dated this 11th day of January 2019.

STATE BOARD OF EQUALIZATION


Martin L. Hardsodg, Chairman

ATTEST:


Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 11th day of January 2019, I served the foregoing **ORDER OF DISMISSAL WITH PREJUDICE** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Thomas N. Long
Aaron J. Lyttle
Long Reimer Wingar Beppler LLP
PO Box 87
2120 Carey Avenue, Suite 300
Cheyenne, WY 82003

Karl D. Anderson
Devin Kenney
Senior Assistant Attorneys General
Wyoming Attorney General's Office
Kendrick Building
2320 Capitol Avenue
Cheyenne, WY 82002


Nadia Broome
Executive Assistant
State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
Phone: (307) 777-6989
Fax: (307) 777-6363

cc: Lucero, Excise Tax Division, Department of Revenue
ABA State and Local Tax Reporter