

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
DAN WALTER ENTERPRISES, LLC FROM) Docket No. 2018-02
A DECISION BY THE DEPARTMENT OF REVENUE)
(Sales Tax License Revocation))

DECISION AND ORDER

APPEARANCES

Dan Walter, Petitioner, filed a notice of appeal but did not otherwise appear.

Karl D. Anderson, Senior Assistant Attorney General, appeared on behalf of the Wyoming Department of Revenue (Department).

DIGEST

Dan Walter Enterprises appeals to the Wyoming State Board of Equalization (State Board) from the Department's revocation of Mr. Walter's sales tax license. The Department revoked the license after Petitioner reported zero gross sales on his sales/use tax returns for three consecutive years (07/01/2014-06/30/2017). The State Board affirms the Department decision.

ISSUE

Whether Dan Walter Enterprises, LLC, should be allowed to retain its sales/use tax license.

JURISDICTION

The State Board shall "review final decisions of the department upon application of any interested person adversely affected." Wyo. Stat. Ann. § 39-11-102.1(c) (2017). A taxpayer may file an appeal with the State Board within 30 days of the Department's final decision. Wyo. Stat. Ann. § 39-15-106(g) (2017).

The Department sent a final letter of determination on January 20, 2018, revoking the sales/use tax license of Dan Walter Enterprises, LLC (Ex. 500) following a notice of intent to revoke the license issued on November 25, 2017. (Ex. 501). Dan Walter Enterprises, LLC timely appealed the Department's determination on February 5, 2018. The State Board has jurisdiction to decide this matter.

FINDINGS OF FACT

1. The Department mailed Petitioner a notice of "Intent to Revoke License" on November 25, 2017 which indicated that Petitioner reported zero sales for three consecutive years, from July 1, 2014 through June 30, 2017. (Ex. 501).
2. The Department mailed Petitioner a License Revocation Notice on January 20, 2018 which outlined the reason for the notice and the process required to show cause as to why the license should not be revoked. (Ex. 500).
3. Petitioner appealed the Department's final determination on February 4, 2018. Petitioner stated his intent to become more "active as a business owner" in 2018, citing various enterprises in which he intended to engage, and asked that he be allowed to retain the license.
4. The Department summary of activity on the account, which was mailed to Petitioner on February 8, 2018, specifically showed the absence of activity for the three prior years. (Ex 502).
5. A hearing on the matter was scheduled for March 20, 2018. Petitioner failed to appear. The Department presented a *prima facie* case through testimony and exhibits supporting the revocation.

CONCLUSIONS OF LAW

A. State Board's review function and burdens of proof

6. "Any vendor whose license is revoked under this subsection may appeal the decision to the state board of equalization as provided by subsection (g) of the section." Wyo. Stat. Ann. § 39-15-106(a) (2017). The role of the State Board in such matters is to adjudicate the dispute between the parties.

It is only by either approving the determination of the Department, or by disapproving the determination and remanding the matter to the Department

that the issues brought before the Board for review can be resolved successfully without invading the statutory prerogatives of the Department. The statutory mandate to the Board is not to maximize revenue or to punish nettlesome taxpayers, but to assure the equality of taxation and fairly adjudicate disputes brought before it.

Amoco Prod. Co. v. Wyo. State Bd. of Equalization, 12 P.3d 668, 674 (Wyo. 2000).

7. As the adjudicating body, the State Board “[d]ecide[s] all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department[.]” Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2017).

8. Unless a statute or Board rule provides otherwise, the Petitioner has the burdens of going forward and of persuasion, and must satisfy those burdens by a preponderance of the evidence. Rules, Wyo. State Bd. of Equalization, ch. 2, § 20 (2006). If the Petitioner provides sufficient evidence that the Department’s determination is incorrect, the burden shifts to the Department to defend its action. *Id.* “A preponderance of the evidence is ‘proof which leads the trier of fact to find that the existence of the contested fact is more probable than its non-existence.’ ” *Landwehr v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2014 WY 25, ¶ 14, 318 P.3d 813, 819 (Wyo. 2014) (quoting *Mitcheson v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2012 WY 74, ¶ 11, 277 P.3d 725, 730 (Wyo. 2012)); *Solvay Chemicals, Inc.*, 2017 WL 4786437 ¶ 18, Docket No. 2016-28, (Wyo. State Bd. of Equalization, October 10, 2017) (citing *Kenyon v. State, ex rel., Wyo. Workers’ Safety & Comp. Div.*, 2011 WY 14, ¶ 22, 247 P.3d 845, 851 (Wyo. 2011)).

B. Applicable statutory and regulatory provisions

9. Wyoming statutes articulate a taxpayer’s responsibilities which must be undertaken to keep a sales/use tax license in good standing, and the process the Department must follow prior to suspending or revoking a license.

10. The section “Licenses; permits” provides:

(a) Every vendor shall obtain from the department a sales tax license to conduct business in the state. Any out-of-state vendor not otherwise subject to this article may voluntarily apply for a license from the department and if licensed, shall collect and remit the state sales tax imposed by W.S. 39-15-104. The license shall be granted only upon application stating the name and address of the applicant, the character of the business in which the

applicant proposes to engage, the location of the proposed business and other information as the department may require. Effective July 1, 1997, a license fee of sixty dollars (\$60.00) shall be required from each new vendor, except for any remote vendor who has no requirement to register in this state, or who is using one (1) of the technology models pursuant to the streamlined sales and use tax agreement. Failure of a vendor to timely file any return may result in forfeiture of the license granted under this section. The department shall charge sixty dollars (\$60.00) for reinstatement of any forfeited license. The department shall send any vendor who reports no gross sales for three (3) consecutive years a form prescribed by the department to show cause why the vendor's license should not be revoked. The vendor shall complete and file the report with the department within thirty (30) days of receipt of the form. If the department finds just cause for the vendor to retain the license, no further action shall be taken. If the department finds just cause to revoke the license, the vendor shall be notified of the revocation. Any vendor whose license is revoked under this subsection may appeal the decision to the state board of equalization as provided in subsection (g) of this section.

(b) A separate license is required for each place of business.

(c) Each license shall be numbered and shall:

(i) Contain the name and residence of the licensee;

(ii) Indicate the place and character of the business of the licensee;

(iii) Be posted in a conspicuous place at the place of business for which it is issued.

(d) No license is transferable.

(e) Licenses issued under this section are valid without further payment of fees until revoked by the department.

(f) Any person discontinuing business shall notify the department, return his license for cancellation and preserve all business records in the state until the department issues a receipt showing all taxes have been paid.

(g) The department may, after providing two (2) written notices of intent to revoke identifying the reasons therefore, revoke the license of any vendor violating any provision of this article. The notices shall be provided at least one (1) week apart and the final notice shall be provided at least thirty (30) days prior to any revocation. The revocation of the department shall inform the vendor of all steps necessary to conform with the revocation and shall include the consequences of failure to cease business activities and the opportunity to appeal as provided in this subsection. The vendor may appeal a revocation under this subsection to the state board of equalization not more than thirty (30) days following the revocation of the license. Appeals before

the state board shall be conducted as contested case proceedings under the Wyoming Administrative Procedure Act. If a license is revoked under this subsection, no license shall thereafter be issued to that person until the applicant has:

(i) Filed a new application with the department;

(ii) Filed with the department all past due returns and has remitted in full all taxes, penalties and interest due.

(h) The department may, after providing notice and an opportunity for a hearing, suspend the license of any vendor violating any provision of this article until the time the vendor is in compliance.

(j) Notwithstanding subsection (a) of this section, and pursuant to department rules and regulations, a vendor who purchases wholesale goods for use in manufacturing, processing or compounding as provided by W.S. 39-15-105(a)(iii), and who does not engage in any retail sale of those goods, shall not be required to obtain a sales tax license.

(k) The department may enter into an agreement with an entity which is not otherwise required to obtain a license under this article and which has one (1) or more independent sales contractors working in this state. Any entity licensed pursuant to this subsection shall be subject to the licensing provisions of this section and shall collect and remit the tax imposed under this article on all taxable sales transactions occurring between entities and the independent sales contractor. Any entity licensed under this subsection shall be subject to all collection and enforcement provisions imposed by this article.

Wyo. Stat. Ann § 39-15-106 (2017); *see* 2017 Wyo. Sess. Laws, ch. 24 § 1 for paragraphs (i) and (ii) of subsection (g).

11. The Department appeared at the hearing in this matter and testified concerning all notifications provided to Petitioner and documentation supporting the revocation determination. Petitioner did not appear or support his request to retain his license. The Board hereby finds that there was a factual basis for the revocation of Petitioner's license and that the Department complied with the statutory requirements in revoking Petitioner's license. The Board finds that Petitioner failed to comply with Wyoming Statutes section 39-15-106(a) (2017) and, therefore, the Department appropriately revoked Petitioner's license.

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ORDER

IT IS HEREBY ORDERED that the decision of the Department of Revenue is **affirmed**.

Pursuant to Wyo. Stat. Ann. §16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

DATED this 9th day of April, 2018.

STATE BOARD OF EQUALIZATION



Martin L. Hardsog, Chairman



David L. Delicath, Vice-Chairman



E. Jayne Mockler, Board Member

ATTEST:




Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2018, I served the foregoing DECISION AND ORDER 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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ABA State and Local Tax Reporter