

Before the
Administrative Hearing Commission
State of Missouri



KMD WORLD SERVICES, LLC,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1725 RI
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

We dismiss the complaint filed by KMD World Services, LLC (“KMD”) because we lack jurisdiction to hear it.

Procedure

On October 2, 2013, Joe H. McDaniel, on behalf of KMD, filed a complaint appealing an income tax notice of deficiency issued by the Director of Revenue (“Director”). On October 29, 2013, the Director filed a motion to dismiss supported by an affidavit and copies of records of the Director. We treat the motion as a motion for summary decision because it relies on matters other than allegations in the complaint.¹ We will grant the motion if the Director establishes facts that entitle him to a favorable decision and KMD does not dispute those facts.² We gave KMD until November 14, 2013 to respond to the motion. KMD did not file a response.

¹Regulation 1 CSR 15-3.436(4)(A).

²Regulation 1 CSR 15-446(6)(A).

Findings of Fact

1. On August 1, 2013, the Director mailed to KMD a Notice of Deficiency – Individual Income (Form 2944) concerning tax years 2009, 2010, and 2011. The notice of deficiency states:³

According to Section 143.631, RSMo, you must submit a written protest to the [Director] within 60 days from the date of this notice stating the reason(s) for such protest. The balance due will become a final assessment if you do not pay the balance due or file a written protest.

2. On October 2, 2013, KMD filed its complaint with this Commission.
3. October 2, 2013, was more than 60 days after August 1, 2013.

Conclusions of Law

Section 621.050.1⁴ gives us jurisdiction over an appeal of “any finding, order, decision, assessment or additional assessment made by the director of revenue.” Before our jurisdiction arises, however, a protest must be filed with the Director and the Director must issue a final decision on that protest.⁵

KMD did not first file its protest with the Director, and the Director has not yet issued his final decision on the protest after we provided him with a copy of it. Therefore, we have no jurisdiction over KMD’s complaint at this time because the protest procedure has not yet concluded. If we have no jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.⁶

³Motion Ex. A-1.

⁴Statutory references, unless otherwise noted, are to RSMo 2000.

⁵Sections 143.631.1 and 143.651; *State ex. rel. Fischer v. Brooks*, 150 S.W.3d 284, 284 (Mo. banc 2004) (describing the filing of a protest as the “exclusive remedy for challenging the assessment.”); *State ex rel. Fischer v. Sanders*, 80 S.W.3d 1 (Mo. App., W.D. 2002) (setting forth the protest as a necessary step in appealing a case to this Commission and then to a court).

⁶*Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).

In past cases where a taxpayer prematurely filed a complaint with us, the Director has stated he will consider the date the complaint was filed with this Commission as the date the protest was filed with him.⁷ However, in those cases, the complaint was filed with us within sixty days, the period for timely filing a protest with the Director under § 143.631. Here, the complaint was filed with us beyond the sixty days allowed for filing a protest with the Director. Consequently, this accommodation would not aid KMD in this case.

Summary

We grant the Director's motion to dismiss because we lack jurisdiction to hear it.

SO ORDERED on December 20, 2013.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

⁷See, e.g., *Headrick v. Director of Revenue*, Case No. 11-1339 RI (Jan. 10, 2012); *Youtzy and Koepke v. Director of Revenue*, Case No. 11-1692 RI (Sept. 27, 2011); *Keele v. Director of Revenue*, Case No. 11-1665 RI (Sept. 27, 2011); *Tompson v. Director of Revenue*, Case No. 11-1603 RI (Sept. 27, 2011); *Gray v. Director of Revenue*, Case No. 11-1578 RI (Sept. 27, 2011); *O'Day v. Director of Revenue*, Case No. 11-1600 RI (Sept. 27, 2011); *Higgerson v. Director of Revenue*, Case No. 11-158 RI (Sept. 20, 2011); *Otto de la Noval v. Director of Revenue*, Case No. 11-1101 (September 12, 2011); *Tooley v. Director of Revenue*, 11-1414 RI (Sept. 1, 2011); *Pate v. Director of Revenue*, Case No. 11-1322 RI (Sept. 1, 2011); *Briggs v. Director of Revenue*, Case No. 11-1163 RI (July 27, 2011).