

Before the  
Administrative Hearing Commission  
State of Missouri



KIMAN KINGSLEY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 13-1408 RS
	)	
DIRECTOR OF REVENUE,	)	
	)	
Respondent.	)	

**DECISION**

We dismiss the complaint filed by Kiman Kingsley because we lack jurisdiction to hear it.

**Procedure**

On August 5, 2013, Kiman Kingsley filed a complaint appealing a final decision of the Director of Revenue (the “Director”). The Director filed a motion for summary decision on September 6, 2012. We gave Kingsley until September 23, 2013 to respond to the motion. Kingsley did not file a response.

This Commission may grant a motion for summary decision if the Director establishes facts that entitle him to a favorable decision and Kingsley does not genuinely dispute those facts.<sup>1</sup> Parties may establish facts by admissible evidence, including a pleading of the adverse

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<sup>1</sup> 1 CSR 15-3.446(6).

party or other evidence admissible under the law.<sup>2</sup> We make the following findings of fact based on the pleadings and the affidavit accompanying the Director's motion.

### **Findings of Fact**

1. The Director informed Kingsley of his final decision imposing use tax, additions to tax, and statutory interest by certified mail on May 31, 2013.
2. On August 5, 2013, Kingsley filed a complaint with this Commission, appealing the Director's final decision.
3. August 5, 2013, was more than sixty days after May 31, 2013.

### **Conclusions of Law**

The Director argues Kingsley's complaint is untimely under § 144.261,<sup>3</sup> which provides:

Final decisions of the director under the provisions of this chapter are reviewable by the filing of a petition with the administrative hearing commission in the manner provided in section 621.050, RSMo; except that, notwithstanding the provisions of section 621.050, RSMo, to the contrary, such petition must be filed within sixty days after the mailing or delivery of such decision, whichever is earlier.

The statute required Kingsley to file an appeal within sixty days of the mailing of the Director's final decision. The final decision was mailed on May 31, 2013. Sixty day from that date was July 30, 2013. Kingsley filed his complaint on August 5, 2013, six days out of time.

The untimely filing of Kingsley's complaint deprives us of jurisdiction to hear it.<sup>4</sup> 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.<sup>5</sup>

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<sup>2</sup> 1 CSR 15-3.446(6).

<sup>3</sup> RSMo 2000.

<sup>4</sup> *Community Fed. Sav. & Loan Assoc. v. Director of Revenue*, 752 S.W.2d 794, 799 (Mo.), cert. denied, 488 U.S. 893 (1988); *Springfield Park Cent. Hosp. v. Director of Revenue*, 643 S.W.2d 599, 600 (Mo. 1984).

<sup>5</sup> *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App. E.D. 2000).

### **Summary**

We grant the Director's motion and dismiss Kingsley's complaint.

SO ORDERED on October 1, 2013.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner