

Before the  
Administrative Hearing Commission  
State of Missouri



TERESA COOK,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 14-1272 RI
	)	
DIRECTOR OF REVENUE,	)	
	)	
Respondent.	)	

**DECISION**

We dismiss the complaint filed by Teresa Cook because we lack the jurisdiction to hear it at this time.

**Procedure**

On July 24, 2014, Cook file a complaint appealing the withholding tax notice of deficiency issued to her by the Director of Revenue (“the Director”). On August 28, 2014, the Director filed an answer and motion to dismiss the complaint. We gave Cook until September 16, 2014 to file a response to the Director’s motion, but she did not file one.

We treat the Director’s motion to dismiss as a motion for summary decision because it relies on matters other than the allegations in the complaint.<sup>1</sup> We may grant a motion for

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<sup>1</sup> 1 CSR 15-3.436(4) and 1 CSR 15-3.446(6)(A). All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

summary decision if a party establishes facts that entitle it to a favorable decision and no party genuinely disputes such facts.<sup>2</sup>

### **Findings of Fact**

1. On June 5, 2014, the Director mailed a withholding tax notice of deficiency to Cook. The face of the notice states:

Pursuant to Section 143.631, RSMo, you have 60 days from the date of this notice to file a written protest **to the Department** stating the reason(s) for the protest.  
[Emphasis added].

2. More specific instructions for how to protest the deficiency notice are included on an attachment to the notice under the main heading, “TAXPAYER CHOICES UPON RECEIPT OF NOTICE OF DEFICIENCY.”

3. Neither the notice of deficiency nor the attachment to the notice sent to Cook contains language concerning a right to appeal such notices to this Commission.

4. On July 24, 2014, Cook filed a letter with this Commission indicating her “intent to appeal an assessment of unpaid sales/use tax that [she] received.”

5. Cook has not filed a protest with the Director regarding the withholding tax notice of deficiency, and the Director has not yet issued a final decision concerning the notice of deficiency.

### **Conclusions of Law**

Section 621.050.1<sup>3</sup> gives us jurisdiction over an appeal of “any finding, order, decision, assessment or additional assessment made by the director of revenue.” However, two Missouri cases appear to make the filing of a protest with the Director a necessary step before an appeal

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

<sup>3</sup>Statutory references, unless otherwise noted, are to RSMo 2000.

can be filed with this Commission. The Supreme Court referred to filing a protest as the “exclusive remedy for challenging the assessment.”<sup>4</sup> *State ex rel. Fischer v. Sanders*<sup>5</sup> sets forth the protest as a necessary step in appealing a case to this Commission and then to a court.<sup>6</sup>

The Director provided uncontested evidence establishing that he has not issued a final decision concerning Cook’s notice of deficiency. Therefore, we are without jurisdiction to hear Cook’s appeal because our jurisdiction only arises upon the issuance of a final decision by the Director. If we have no jurisdiction, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.<sup>7</sup>

### Summary

We grant the Director’s motion and dismiss Cook’s complaint.

SO ORDERED on November 13, 2014.

*s/ Sreenivasa Rao Dandamudi*  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>4</sup>*State ex. rel. Fischer v. Brooks*, 150 S.W.3d 284, 284 (Mo. banc 2004).

<sup>5</sup>80 S.W.3d 1 (Mo. App. W.D. 2002).

<sup>6</sup>*Id.* at 5.

<sup>7</sup>*Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App. E.D. 2000).