

Before the  
Administrative Hearing Commission  
State of Missouri



STANION WHOLESALE )  
ELECTRIC COMPANY, INC., )

Petitioner, )

vs. )

DIRECTOR OF REVENUE, )

Respondent. )

No. 13-1575 RS

**DECISION**

We dismiss the complaint filed by Stanion Wholesale Electric Company, Inc. (“Stanion”), because we lack jurisdiction to hear it.

**Procedure**

On August 29, 2013, Stanion filed its complaint, requesting review of the Director of Revenue’s denial of its application for sales tax refunds. On September 26, 2013, the Director filed an answer and motion for summary decision, accompanied by an affidavit and records of the Department of Revenue. We notified Stanion that it could respond to the motion on or before October 11, 2013, but Stanion filed no response.

We may grant a motion for summary decision if a party establishes facts that entitle it to a favorable decision and no party genuinely disputes those facts. 1 CSR 15-3.446(6)(A).<sup>1</sup> By

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<sup>1</sup> 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.

failing to respond to the motion for summary decision, Stanion has failed to raise a genuine issue as to the facts the Director established in his motion. 1 CSR 15-3.446(6)(B). We consider those facts as well as the allegations set forth in Stanion’s complaint not denied by the Director in his answer. The following facts are undisputed.

### **Findings of Fact**

1. On September 28, 2012, Stanion filed sales tax refund claims (“the 2012 refund claims”) with the Director in the total amount of \$1,721.80 for the taxable periods from December 1, 2010 to May 31, 2012.

2. The Director requested additional information regarding the 2012 refund claims; specifically, how certain items were used in the manufacturing process. Stanion subsequently submitted additional information.<sup>2</sup>

3. The Director issued a final decision denying the 2012 refund claims to Stanion on March 6, 2013, by certified mail. In the final decision, the Director stated that the refund application was denied “because applicant did not provide complete and accurate information supporting the refund claim.”<sup>3</sup>

4. The Director’s March 6, 2013 final decision also contained the following notification:

If you were adversely affected by this decision, you may appeal to the Administrative Hearing Commission, Post Office Box 1557, Jefferson City, Missouri 65102-1557. To appeal, you must file a petition with the Administrative Hearing Commission within sixty (60) days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed. If it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is

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<sup>2</sup> In its complaint, Stanion states that the Director requested the additional information on December 12, 2012, and that it supplied the information on October 31, 2012. One of these dates is clearly wrong.

<sup>3</sup> Att. 2 to Ex. A to Director’s motion.

received by the commission as stated in Section 621.050.1, RSMo[.<sup>4</sup>]

5. On May 30, 2013, Stanion filed with the Department a new set of applications (“the 2013 resubmitted claims”) for the same refund claims the Director had denied in his March 6, 2013 decision. The 2013 resubmitted claims were the same as the 2012 refund claims, but with additional information provided on the claim form.

6. On August 22, 2013, the Department returned the 2013 resubmitted claims to Stanion with a letter stating:

According to our letter dated March 6, 2013, your request for refund/credit for the period(s) December 2010 through May 2012 was previously denied. This denial was the final decision of the Director of Revenue. Enclosed you will find your application for Refund/Credit which we are returning to you.<sup>[5]</sup>

7. On August 29, 2013, Stanion filed an appeal with this Commission.

### **Conclusions of Law**

This Commission has jurisdiction over appeals from the Director’s final decisions. Section 621.050.<sup>6</sup> However, our jurisdiction comes from the statutes alone, and is bounded by those statutes. *State Bd. of Regis’n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974). Section 144.261, applicable here, provides that appeals from the Director’s final decisions must be filed within sixty days after the mailing or delivery of the final decision.

In this case, the Director mailed his final decision to Stanion on March 6, 2013. Although notified of its appeal rights, Stanion did not timely file an appeal of that final decision, instead choosing to submit the same refund claims with additional information to the Director on May 30, 2013. Only after the Director returned the 2013 resubmitted claims to Stanion, by letter dated August 22, 2013, did Stanion file an appeal with this Commission, on August 29, 2013.

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<sup>4</sup> Att. 2 to Ex. A to Director’s motion.

<sup>5</sup> Att. 4 to Ex. A to Director’s motion.

<sup>6</sup> Statutory references are to RSMo 2000, unless otherwise noted.

The Director's August 22, 2013 letter was merely a cover letter returning the 2013 resubmitted claims; it did not represent a "finding, order, decision, assessment or additional assessment" made by the Director. Section 621.050.1. The March 6, 2013 letter was such a final decision, but Stanion did not timely file an appeal from it – August 22, 2013 is considerably more than sixty days after March 6, 2013.

In its complaint, Stanion states that it believed its 2012 refund claim had not been sufficiently clear, so the company resubmitted the claims with additional information. It also represents that it tries to be careful and conscientious about collecting and paying taxes, but its customers do not always provide it with accurate timely information to support their own claims of tax exemption. We have no reason to doubt these representations, and if Stanion had timely filed its complaint with this Commission, we could have considered the information in support of its claim. Because it did not timely file its complaint, however, we lack jurisdiction to hear it.

If we have no jurisdiction to hear the petition, we cannot reach the merits of the case and can only exercise our inherent power to dismiss. *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000). Accordingly, we grant the Director's motion for summary decision.

### **Summary**

We grant the Director's motion for summary decision and dismiss Stanion's complaint.

SO ORDERED on October 31, 2013.

\s\ Karen A. Winn  
KAREN A. WINN  
Commissioner