

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF

SAMUEL AUEN
KRUNKWICH, LLC
555 SW 7th St., Unit 20
Des Moines, IA 50309

PERMIT NO. 1-77-122189

**DIRECTOR'S FINAL ORDER ON
PERMIT REVOCATION**

Docket No: 19DR0028
Revenue Docket No. 2019-REVOC-0001

PROCEDURAL SUMMARY

An administrative law judge ("ALJ") issued a Proposed Decision (Statement of the Case, Factual Findings, and Conclusions of Law) in the above-captioned matter on March 18, 2019, and issued an Amended Proposed Decision the same day. The ALJ upheld the Iowa Department of Revenue's ("Department") decision to revoke Krunkwich, LLC's ("Permit Holder") sales tax permit, permit number 1-77-122189. On March 27, 2019, Permit Holder appealed the Amended Proposed Decision.

A hearing was scheduled for the above-captioned matter before the Director of Revenue ("Director") on April 29, 2019. Brandon Gray, Assistant Attorney General, and Carmela Shaw, Revenue Examiner, were present on behalf of the Department; Permit Holder was also present by telephone. On April 30, 2019, the Director issued a Continuance of the permit revocation to June 1, 2019 on the condition that the Permit Holder do all of the following: 1) Establish a payment plan with the Department for monthly payments of \$5000.00 by May 10, 2019; 2) make the first \$5000.00 payment under that payment plan no later than May 20, 2019; 3) make a one-time payment of 80% of the proceeds of an auction held by Permit Holder within seven days of the auction or before July 31, 2019, whichever is sooner; and 4) keep current with all future sales and withholding tax obligations from that date onward. Under the terms of the Continuance,

failure to complete any of these conditions constitutes grounds for immediate revocation of the permit. The Director further instructed the Department to file a statement by May 31, 2019 attesting to Permit Holder's compliance with these conditions.

On May 31, 2019, the Department filed a Statement pursuant to the Continuance order. Therein, the Department stated that Permit Holder 1) failed to make any payment of its first quarter sales tax liabilities for 2019 despite reporting \$6780.00 in sales taxed collected, and 2) failed to make the required \$5000.00 monthly payment pursuant to the payment plan. Permit Holder has not filed a response.

CONCLUSIONS OF LAW

Iowa Code section 423.36(1) provides that no person shall make taxable sales in Iowa without first obtaining a sales tax permit. Iowa Code section 423.36(6) further provides that the Department may revoke a sales tax permit for, among other things, failure to comply with any provision of law or rule adopted under Iowa Code chapter 423, subchapters II, III, or V, or for being substantially delinquent in the payment of any tax, interest, or penalty administered by the Department.

As demonstrated by Iowa Administrative Code rule 701—13.16, the determination of whether any tax owed is “substantially delinquent” is a fact-based inquiry. Factors relevant to this determination include: The amount of tax, penalty, and interest owed; the number of filing periods for which these amounts remain due; the length of time the amounts have remained unpaid; whether the failure to pay these amounts was intentional or not; the financial resources available to the permit holder; and the future viability of the permit holder's business.

Here, nearly every factor weighs heavily in favor of revocation. As of the date of this Order, Permit Holder owes the Department \$76,750.25 in sales tax, penalty, and interest and

\$18,143.84 in withholding tax, penalty, and interest from Krunkwich, and \$58,838.29 in sales tax, penalty, and interest and \$10,324.10 in withholding tax, penalty, and interest from Tacopocalypse. In addition, Mr. Auen owes the Department \$123,621.07 in estimated unpaid individual income taxes. These delinquencies have been accruing for years, some as early as 2013. In total, Permit Holder currently owes the Department \$287,677.55 in unpaid taxes, including penalty and interest.

Permit Holder has also failed to abide by various statutory and regulatory requirements, including failing to make required payments of sales and withholding taxes owed and failing to file individual income tax returns. Given the length of time these delinquencies have existed, the numerous times the Department has attempted to establish a payment plan with Permit Holder, and the Permit Holder's routine reliance on dishonored checks to attempt making payments, there is no doubt that Permit Holder's delinquencies are intentional. Permit Holder's responses to questioning at the April 29, 2019 hearing clearly indicated that Permit Holder was struggling financially. And according to a Des Moines Register article dated June 1, 2019, it appears Permit Holder's business—Krunkwich Ramen House—has officially closed. Linh Ta, *Krunkwich Ramen House off Ingersoll closes its doors*, Des Moines Register, June 1, 2019, <https://www.desmoinesregister.com/story/money/business/2019/06/01/krunkwich-ramen-house-closed-permanently-sam-auen-tacopocalypse-restaurant-vegan-japanese-ingersoll/1310970001/>.

Based on these facts as established in the record, the Director finds that Permit Holder is substantially delinquent in the payment of sales taxes, withholding taxes, and individual income taxes, and has further failed to comply with various requirements under Iowa Code chapter 423 subchapters II, III, and V, and Department rules implemented thereunder. The Director therefore finds that revocation of Permit Holder's sales tax permit is warranted.

ORDER

IT IS THEREFORE ORDERED that sales tax permit number 1-77-122189 issued to Krunkwich, LLC is hereby **REVOKED effective June 5, 2019**.

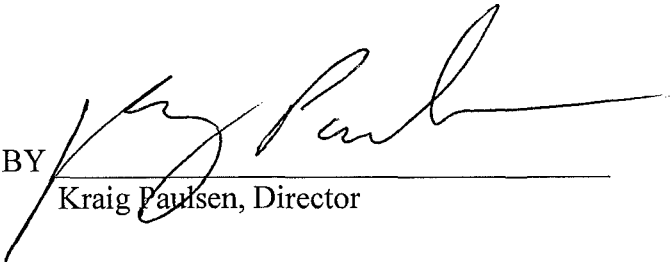
IT IS FURTHER ORDERED that Permit holder shall cease making any and all sales under said permit number. Making taxable sales after a sales tax permit has been revoked and before the permit has been reinstated constitutes an aggravated misdemeanor. Iowa Code § 423.40(2)(b).

Pursuant to Iowa Administrative Code rule 701—13.7, Permit Holder may make application for reinstatement of permit number 1-77-122189 no sooner than **sixty days** from the date of this Order. Permit Holder must comply with all of the conditions set forth in rule 701—13.7 before the Director will consider reinstatement of the permit.

Issued at Des Moines, Iowa, this 4th day of June, 2019.

IOWA DEPARTMENT OF REVENUE

BY


Kraig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 4th day of June, 2019, I caused a true and correct copy of the Continuance Order to be forwarded by U. S. Mail or delivered to the following person(s):

Samuel Auen
555 SW 7th St., Unit 20
Des Moines, IA 50309

Lloyd Ogle
301 E. Walnut St., Ste. 2
Des Moines, IA 50309

Carmela Shaw
Iowa Department of Revenue
Revenue Examiner
Hoover State Office Building
1305 E. Walnut St., Third Floor
Des Moines, Iowa 50319

Brandon Gray
Assistant Attorney General
Iowa Attorney General's Office
Hoover State Office Building
1305 E. Walnut St., First Floor
Des Moines, Iowa 50319

A handwritten signature in black ink, reading "Hollie Welch". The signature is written in a cursive style with a horizontal line underneath.

Hollie Welch
Executive Secretary
Iowa Department of Revenue