

Note: The appeal period has expired, pursuant to Iowa Admin. Code rule 701-7.17(8)(d) the Administrative Law Judge's proposed decision is adopted as the final decision by the Department.

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319

<p>Amy Leitch 272 West Main Street Marengo, IA 52301,</p> <p>Appellant,</p> <p>v.</p> <p>Iowa Department of Revenue,</p> <p>Respondent.</p>	<p>Case No. 21IDRIIT0004 (Rev. Docket No. 2019-200-1-0590)</p> <p>PROPOSED DECISION</p>
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Telephonic hearing in this matter was held on January 26, 2021. Appellant, Amy Leitch, was present for hearing and represented by attorney Fred Stiefel. Appellant testified on her own behalf. Assistant Attorney General Andrew Jensen appeared on behalf of the Iowa Department of Revenue ("Department"). Malia Kirkpatrick, Tax Appeals Specialist, testified on behalf of the Department. Department exhibits A-N were received into evidence without objection and official notice was taken of the administrative file.

ISSUE

Whether good cause exists to reinstate Appellant's protest.

FINDINGS OF FACT

The Department issues notices of assessments in order to notify a taxpayer that liability has been assessed. The taxpayer has 60 days from the date of notice to appeal the assessment. The notice of assessments are mailed using the last known address of the taxpayer. Last known addresses are usually found from a taxpayer's last tax return filed. Taxpayers are responsible for providing the Department an accurate address. The Department routinely mails notices of assessments in batch mailings. The mailings are sent to the Office of the Chief Information Officer for purposes of printing and mailing. Records of the mailings are sent back to the Department so individual mailings can be verified. (Kirkpatrick Testimony).

On April 19, 2019, the Department issued a Notice of Assessment ("Assessment") to the Appellant assessing \$6,331.59 in taxes for the calendar years of 2015, 2016, and 2017. The Assessment was addressed to Appellant at "1500 HARVEST ST NORTH LIBERTY, IA 52317-9810." (Ex. A). Appellant received the Assessment at the 1500 Harvest Street address. (Leitch Testimony). The Assessment contained a phone number to contact with questions and appeal language which stated "the period for filing an appeal is 60 days from the notice date on the front of this Notice of Assessment." (Ex. A). Appellant did not appeal the Assessment within the 60 day timeframe. (Leitch Testimony).

On August 20, 2019, the Department issued a Notice of Assessment to the Appellant assessing \$542.37 in taxes for the 2018 calendar year. (Ex. B). This Assessment was sent to the same address as the April 19, 2019, Assessment at 1500 Harvest St. in North Liberty. *Id.* According to Appellant, she was in the process of moving when the second assessment was sent and therefore did not receive the August 20, 2019, Assessment. However, Appellant was made aware of the Assessment through discussions with her accountant. No appeal was taken on the August 20, 2019, Assessment. (Leitch Testimony). The 60-day time limit given to Appellant in order to protest the first Assessment expired on June 18, 2019. (Kirkpatrick testimony). The 60-day time limit given to Appellant in order to protest the second Assessment expired on October 19, 2019. *Id.*

On April 2, 2020, Appellant submitted an Application for Reinstatement of Dismissed Protest ("Application"). (Ex. E). In the Application Appellant provided the address of 272 West Main Street, Marengo, Iowa 52301. *Id.* The Application informed the Department that Appellant's protest was filed late due to Appellant relying on advice from her accountant to submit amended returns in order to satisfy the appeals period. *Id.* Appellant claimed that she never received a formal dismissal and cites the COVID-19 pandemic as a reason for the delay in submitting some documents. (*See id.*; Ex. G). Following receipt of the Application, the Department notified Appellant by letter to her recently provided address in Marengo that the Department had no record that a protest had been filed. The Department requested Appellant to provide the protest she was requesting reinstatement of by May 21, 2020. (Ex. F). On July 20, 2020, Appellant filed a protest of the April and August 2019 Assessments. (Ex. C).

On August 31, 2020, the Department informed Appellant by letter that the Application for Reinstatement was denied. The Department summarized the timeline of the Assessments, appeal deadlines, and Application. The Department informed Appellant that filing amended returns did not stay the appeal deadlines and the appeal deadlines expired well in advance of the COVID-19 pandemic and therefore could not have impacted Appellant's ability to timely file protests to the Assessments. The Department further provided the applicable law and rules

controlling the matter in support of its decision. (Ex. G).

At hearing, Tax Appeals Specialist Malia Kirkpatrick testified to the timeline of this appeal as described above. Ms. Kirkpatrick testified that she verified Appellant's Assessments were in fact sent to Appellant's last known address at the time of mailing and explained said process of verification. Ms. Kirkpatrick stated that when a taxpayer receives an assessment they have three options: (1) pay the assessment; (2) file an appeal as described in the assessment notice; or (3) work with a Department examiner in an attempt to reconcile the differences. Ms. Kirkpatrick stated that working with an examiner does not extend the time of the appeal. Ms. Kirkpatrick further stated that although Appellant's appeal time has run Appellant still has the option to pay her taxes and then request a refund. (Kirkpatrick Testimony).

Appellant testified at hearing that she was aware of the assessments during the time period for appeal. Appellant received the April 2019 Assessment in the mail. Following receipt of the Assessment, Appellant contacted her accountant who advised Appellant to file amended returns and work with the examiner. The accountant advised Appellant not to file an appeal. Appellant was also made aware of the August 2019 assessment by her accountant who had been working with the Department on Appellant's behalf. Appellant testified she was not aware things had not been taken care of by her accountant until she received a letter in the mail informing Appellant her nursing license was going to be revoked due to her failure to pay the Assessments. Upon receiving this information, Appellant called the Department and spoke with employee Marcia Peterson. Appellant asserted that Marcia Peterson advised Appellant to file the Application for Reinstatement and sent Appellant the application to fill out. After submitting the paperwork Appellant believed necessary, Appellant received her denial from the Department. Appellant subsequently hired an attorney to assist her in the present appeal. (Leitch Testimony).

Appellant testified that she believed that working with the Department examiner would take care of things. Appellant stated that had the examiner told her she needed to appeal to keep the issue alive she would have done so. Although Appellant was aware of the August 2019 Assessment, she argued it was sent to the wrong address therefore she did not receive proper notice. Appellant also testified that she was going through a difficult time with moving, being a single mother, COVID-19, and her father suddenly dying in 2019. Appellant was under a lot of stress and tried to meet the demands of the Department. (Leitch Testimony).

CONCLUSIONS OF LAW

Iowa law imposes an income tax "upon every resident and nonresident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income

as defined in [Iowa Code chapter 422, Division II]" Iowa Code § 422.5(1). When the Department "discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due[, it] is authorized to notify the taxpayer of this discovery by ordinary mail." 701 Iowa Administrative Code ("IAC") 43.1(1). "The notice shall not be termed an assessment, and it may inform the taxpayer what amount would be due if the information discovered is correct." *Id.*

If the matter cannot be resolved in accord with the procedures set out in the Department's administrative rules, then "a notice of assessment shall be sent to the taxpayer by mail." 701 IAC 43.2. "A taxpayer may appeal to the director for revision of the tax, interest, or penalties assessed at any time within sixty days from the date of the notice of the assessment of tax, additional tax, interest, or penalties." Iowa Code § 422.28. The appeal is called a protest and it must conform to certain captioning and substantive requirements. 701 IAC 7.8(6), (7). The Department "may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect." 701 IAC 43.2.

"If the department fails to mail a notice of assessment . . . to the taxpayer's last known address or fails to personally deliver such notice to a taxpayer . . . , the time period to appeal the notice of assessment . . . for refund is suspended until the notice . . . is correctly mailed or personally delivered, or in any event, for a period not to exceed one year, whichever is the lesser period." Iowa Code § 421.60(3). "Last-known address does not necessarily mean the taxpayer's actual address but instead means the last address that the taxpayer makes known to the department by tax type." 701 IAC 7.2. Further according to the Department's rules, "[t]axpayers should be aware of their need to update their address with the department in order to receive . . . notices of assessment" "When such a notice is sent to a 'taxpayer's last-known address,' the notice is legally effective even if the taxpayer never receives it." *Id.*

Failure of a protest to be timely filed may be grounds for dismissal. 701 IAC 7.11(2)(a). If a protest is dismissed as being untimely filed, "the protester may file an application for reinstatement of the protest for good cause." *Id.* An application for reinstatement may only be granted, and the protest reinstated, "for good cause as interpreted by the Iowa [S]upreme [C]ourt in the case of *Purethane, Inc. v. Iowa State Board of Tax Review*, 498 N.W.2d 706 (Iowa 1993)." Good cause could be "shown based on mistake, inadvertence, surprise, excusable neglect or unavoidable casualty." *Id.* Good cause must be "a sound, effective, truthful reason, something more than an excuse, a plea, an apology, an extenuation or some justification for the resulting effect." *Id.* "Failure must not be the result of negligence, want of ordinary care or

attention, or due to carelessness or inattention." *Id.* Further, "[g]ood cause does not include mistakes or errors of judgment growing out of misunderstanding of the law or the failure of the parties or counsel through mistake to avail themselves of remedies, which if resorted to would have prevented the casualty or misfortune." *Id.* The actions of a taxpayer's representative can be attributed to the taxpayer, as adverse decisions based on untimeliness will not be set aside if it arises from "the negligence or carelessness of the defendant or defendant's attorney . . . for the law rewards the diligent and not the careless." *Id.*

The Department issued Appellant's first Assessment on April 19, 2019. Appellant received the Assessment. The period for appealing the Assessment expired on June 18, 2019. The Department issued Appellant's second Assessment on August 20, 2019. The Assessment was mailed to the same address the April 2019 Assessment was mailed to because that was the last known address of Appellant as defined by 701 IAC 7.2. Although Appellant claims to have not received the August 2019 Assessment in the mail, it was delivered to her last known address as defined by the Department's rules. Further, Appellant was aware of the August 2019 Assessment due to communications with her accountant. The period for appealing the August 2019 Assessment expired on October 19, 2019. Appellant's reliance on her accountant's advice or her lack of knowledge of the appeal process are not extenuating circumstances that constitute good cause under *Purethane*. Furthermore, any actions taken by Appellant or misfortunes she may have encountered after the appeal deadlines expired are not relevant to this analysis. Appellant had 60 days to appeal each Assessment. The Assessments were properly mailed to her last known address. Appellant did not appeal either Assessment. Based on the facts of this case, good cause as defined by *Purethane* does not exist to reinstate Appellant's protest. Consequently, the Department's actions are AFFIRMED.

ORDER

The Department's actions in this matter are AFFIRMED. The Department shall take any action necessary to implement and enforce this decision.

IT IS SO ORDERED.

Dated this the 22nd day of February, 2021.

A handwritten signature in blue ink, appearing to read "Denise A. Timmins", is written over a faint, circular official stamp.

Denise A. Timmins
Administrative Law Judge

NOTICE

Any aggrieved party has 30 days, including Saturdays, Sundays and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. 701 IAC 7.17(8)(d). The appeal must be made in writing. The appeal shall be directed to:

Office of the Director
Iowa Department of Revenue
Hoover State Office Building
Des Moines, Iowa 50319

Cc: Taxpayer (By mail)
Fred Stiefel, Attorney for Taxpayer (By email)
Andrew Jensen, AAG (By email)