

**Arizona Department of  
Economic Security**



**Appeals Board**

Appeals Board No. T-1003078-001-B

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In the Matter of:

XXXXXXXX	XXXXXXXX	XXXXXXXX,	ESA TAX UNIT
X.X.X.			C/O ROBERT DUNN, ASSISTANT
XXXX X. XXXXXX XX.,	XXX. XXX		ATTORNEY GENERAL
XXXXXXXXXXXX, XX	XXXXX-XXXX		1275 W. WASHINGTON ST.
			PHOENIX, AZ 85007

Employer

Department

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**DECISION**  
**AFFIRMED**

THE **EMPLOYER** petitions for a hearing from the Reconsidered Determination issued October 25, 2005, which affirmed the Amended Tax Rate Notice of March 4, 2005, because the Employer's voluntary payment was not received by the Department until August 11, 2005, and did not comply with the provisions of A.R.S. 23-726 (C), so as to affect the tax rate for calendar year 2005.

The appeal having been timely filed, the Appeals Board has jurisdiction in this matter pursuant to A.R.S. § 23-724(B).

At the direction of the Appeals Board, after proper notice, a hearing was held on July 28, 2006, in Phoenix, Arizona before William E. Good, an Administrative Law Judge, for the purpose of considering the following issue:

Whether the Employer timely submitted a voluntary payment to the Tax Unit of the Department so as to affect the tax rate for calendar year 2005, pursuant to the provisions of A.R.S. 23-726 (C).

The following persons appeared at the hearing:

ROBERT DUNN  
VIVIAN NAST

Department representative and witness  
Department witness

The witnesses for the Department were sworn and testified. Documents in the file marked and identified as Board Exhibits 1 through 18 were admitted into evidence. The Employer appeared by letter in lieu of appearance.

We have carefully reviewed the entire record, including the exhibits admitted into evidence and the transcript of the Appeals Board hearing.

THE APPEALS BOARD FINDS the facts pertinent to the issue before us and necessary to our decision are:

1. A Determination of Unemployment Tax Rate for Calendar Year 2005, of X.XX%, was sent by mail on January 4, 2005, to the Employer's last known address of record. The Determination also advised the Employer that "A VOLUNTARY PAYMENT OF \$XXX.XX MAY BE MADE TO OBTAIN THE NEXT LOWER TAX RATE OF X.XX.... and SEE ADDITIONAL INSTRUCTIONS ON REVERSE. The reverse indicated that **Voluntary Payment remittance must be postmarked no later than January 31 of this year** (Tr. p. 8; Bd. Exh. 13).
2. On January 31, 2005, the Employer mailed a check for \$XXX.XX to the Department (Bd. Exhs. 3, 18).
3. The Department took all such voluntary payments it received and caused computations to be made to reflect the payments. The voluntary payments are kept separate from other funds (Tr. p. 10).
4. As a result of the check received from the Employer, an amended Determination of Unemployment Tax Rate for Calendar Year 2005, of X.XX%, was sent by mail on February 28, 2005, to the Employer's last known address of record (Tr. p. 10-11; Bd. Exh. 14) .
5. On March 4, 2005, the Department discovered that the check which the Employer had sent on

January 31, 2005, was not honored by the bank on which it was drawn because the account was closed (Tr. pp. 12, 13; Bd. Exhs. 3, 18).

6. On March 4, 2005, an amended Determination of Unemployment Tax Rate for Calendar Year 2005, of X.XX%, was sent by mail to the Employer's last known address of record (Tr. pp. 12, 13; Bd. Exh. 15).

In this case, the Employer's voluntary payment was required to be made by January 31, 2005, in order to be timely. It was not filed until August 11, 2005.

Arizona Revised Statutes § 23-726 provides in pertinent part

Contributions; voluntary payment

\* \* \*

- C. An employer may make voluntary payments in addition to the contributions required under this chapter, which shall be credited to his account in accordance with commission regulation. The voluntary payments shall be included in the employer's account as of the employer's most recent computation date if they are made on or before the following January 31. Voluntary payments when accepted from an employer will not be refunded in whole or in part.

Arizona Administrative Code, Section R6-3-1716 provides:

Voluntary contributions

Section 23-726 of the Employment Security Law of Arizona provides for an employer to make voluntary payments in addition to required contributions, which are credited to his account and included in the computation of the employer's experience rate.

In conformity with this section, the Department of Economic Security prescribes:

- A. Separate accounting records of voluntary contributions shall be established for each employer making such contributions. Money so paid and credited may not be credited to the separate account of employer contributions required on wages paid. Voluntary contributions shall be in any amount desired by the employer and need not bear any relationship

to wages paid. When such voluntary payments have been received by the Department and credited in the voluntary contribution account of the employer, they may not be returned to the employer and shall be deposited in the trust fund of the Department.

- B The Department shall supply on request of the employer, received before January 31 of any calendar year, information as to the effect of any voluntary contribution on the yearly contribution rate commencing January 1 of such calendar year. Any voluntary contribution received by the Department post marked on or before January 31 of any calendar year shall be used in computing the rate

Arizona Administrative Code, Section R6-3-1404 provides in pertinent part:

- A. Except as otherwise provided by statute or by Department regulation, any payment, appeal, application, request, notice, objection, petition, report, or other information or document submitted to the Department shall be considered received by and filed with the Department:

- 1. If transmitted via the United States Postal Service or its successor, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark, of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion (emphasis added).

\* \* \*

- B. The submission of any payment, appeal, application, request, notice, objection, petition, report, or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the Department that the delay in submission was due to: Department error or misinformation, delay or other action of the United States Postal Service or its

successor, or when the delay in submission was because the individual changed his mailing address at a time when there would have been no reason for him to notify the Department of the address change.

\* \* \*

Here, the Employer contends that its payment was timely and that it has sufficient funds to cover the check that was not honored by its bank. The issue is not whether the payment was timely submitted but whether it was complete when submitted. It is not a matter that can be settled by a late payment fee or penalty. The payment was due by January 31, 2005, in funds that are immediately available. Here, the funds were not available.

Based upon the evidence before us, the Board concludes that the Employer failed to timely file a voluntary payment to obtain a lower tax rate. The Employer's failure was not due to any of the conditions described in Arizona Administrative Code, Section R6-3-1404 (B). Accordingly,

**THE APPEALS BOARD AFFIRMS** the Department's Decision of October 25, 2005.

The Amended Determination of Unemployment Tax Rate of X.XX%, issued March 4, 2005, for Calendar Year 2005, is final and binding on the Employer.

DATED:

APPEALS BOARD

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HUGO M. FRANCO, Chairman

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WILLIAM G. DADE, Member

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MARILYN J. WHITE, Member

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**PERSONS WITH DISABILITIES:** Under the Americans with Disabilities Act, the Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service, or activity. For example, this means that if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. Please contact the Appeals Board Chairman at (602) 229-2806.

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**RIGHT TO FURTHER REVIEW BY THE APPEALS BOARD**

Pursuant to A.R.S. § 23-672(F), the final date for filing a request for review is \_\_\_\_\_.

**INSTRUCTIONS FOR FILING A REQUEST FOR REVIEW OF THE BOARD'S DECISION**

1. A request for review must be filed in writing within 30 calendar days from the mailing date of the Appeals Board's decision. A request for review is considered filed on the date it is mailed via the United States Postal Service, as shown by the postmark, to any public employment office in the United States or Canada, or to the Appeals Board, 1140 E. Washington, Box 14, [Suite 104], Phoenix, Arizona 85034. Telephone: (602) 229-2806. A request for review may also be filed in person at the above locations or transmitted by a means other than the United States Postal Service. If it is filed in person or transmitted by a means other than the United States Postal Service, it will be considered filed on the date it is received.
  
2. Parties may be represented in the following manner:  
  
An individual party (either claimant or opposing party) may represent himself or be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.
  
3. The request for review must be signed by the proper party and must be accompanied by a memorandum stating the reasons why the appeals board's

decision is in error and containing appropriate citations of the record, rules and other authority. Upon motion, and for good cause, the Appeals Board may extend the time for filing a request for review. The timely filing of such a request for review is a prerequisite to any further appeal.

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A copy of the foregoing was mailed on  
to:

(x) Er: XXXXXXXX XXXXXXXXX XXXXXXXXX,                      Acct. No: XXXXXXXX-XXX  
      X.X.X.

(x) ROBERT DUNN  
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By: \_\_\_\_\_  
      For The Appeals Board