

05-1255
Audit
Signed 12/30/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	ORDER
)	
Petitioner,)	Appeal No. 05-1255
)	
v.)	
)	Tax Type: Cigarette/Use Tax
AUDITING DIVISION OF THE UTAH)	
STATE TAX COMMISSION,)	Tax Year: 2004-2005
)	
Respondent.)	Judge: Rees
)	

STATEMENT OF THE CASE

The Division issued an assessment notice to Petitioner, assessing cigarette and use tax on purchases of untaxed cigarettes that were delivered to Petitioner in Utah. The cigarette tax assessment is in the amount of \$\$\$\$\$ (including \$\$\$\$\$ in interest), and the use tax assessment amounts to \$\$\$\$\$ (including \$\$\$\$\$ in interest). The purchases were made during the period of July 29, 2004 to March 2, 2005. No penalty was assessed.

Petitioner filed an appeal of the assessment and noted on the appeal form that he wanted the matter decided on the record. Although a hearing date was set, Petitioner did not appear. Therefore, the Division was instructed to document its case in writing and submit it for the record. This decision, then, is based on the written record submitted by the parties

APPLICABLE LAW

Cigarette Tax

Utah law imposes a cigarette tax on “the sale, use, storage or distribution of cigarettes in the state.” Utah Code §59-14-204. Typically, cigarettes distributed for sale in Utah are affixed with a cigarette stamp on each pack, which indicates that the tax has been paid by the manufacturer, distributor or vendor. Utah Code §§59-14-204 and 59-14-205. When a purchaser causes untaxed cigarettes to be delivered into the state, that purchaser must file a statement and pay the tax directly to the Tax Commission within 15 days of storage, use or consumption in Utah, or by the 15th of the month following the calendar month in which the cigarettes were

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imported, if authorized by the Commission. Utah Admin. Rules R865-20T-1 and R865-20T-2.

Use Tax

Utah law imposes sales and use tax on retail sales in Utah. Utah Code §59-12-103(1). Utah vendors and some out-of-state vendors are required by law to collect Utah sales tax on behalf of the Tax Commission on each Utah sale. However, if the seller does not collect the tax on items sold and delivered into Utah, the purchaser is required to accrue and remit use tax directly to the Tax Commission on his or her individual income tax return. Utah Code §59-12-107(1) (d); Utah Admin. Rule R865-21U-3; and Utah Admin. Rule R865-21U-6.

Penalties and Interest

If the purchaser fails to report and pay any tax due within the prescribed time period, the Commission may assess the tax, plus interest and penalties. Interest runs from the date that the return was due. Utah Code §59-1-204 (5).

DISCUSSION

Under federal law, the Jenkins Act, internet cigarette vendors are required to report their Utah internet sales. Upon receiving a report and identifying the Petitioner's untaxed cigarette purchases, the Division issued an assessment for the unpaid cigarette tax and the unpaid use tax on each transaction. Petitioner does not deny that he made these purchases. He states that some or all of the cigarettes purchased carried a STATE cigarette stamp, so he assumed that the tax had been paid. He indicated that he was aware that the invoices showed no sales tax had been collected on these purchases.

DECISION AND ORDER

Payment of the STATE cigarette tax does not satisfy the obligation to pay Utah cigarette tax on products sold in Utah or delivered to Utah, so the Utah tax is due. Whether Petitioner is eligible for a refund of the STATE cigarette tax is a question that Petitioner must address with the State of STATE.

The Tax Commission has very little latitude to waive tax and interest that is due under Utah law. It has liberal authority to waive penalties, but no penalties were imposed in this case. Therefore, the

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Commission affirms the assessment of the cigarette tax and the use tax and interest. However, the Commission directs the Division to recalculate the interest on the cigarette tax. Under section 59-1-402(5) of the Utah Code, interest runs from the date that the return is due. Utah Administrative Rule R865-20T-2 states that the return is due (1) 15 days from the date of use, storage or consumption in Utah, or (2) the 15th day of the month following the calendar month in which the cigarettes were purchased. The provision for monthly filings appears to be in place for those who import cigarettes regularly who are authorized to report and pay the tax on a monthly basis. In the case of the individual taxpayer here, the Division applied the first provision and calculated the interest beginning 15 days after the date of purchase. However, the rule states that the interest runs from 15 days after the date the cigarettes were stored, used or consumed in Utah, and not 15 days from the date of purchase. Because we do not know when the cigarettes were delivered into Utah, the Commission resorts to the second provision of the rule and directs the Division to calculate the interest from the 15th of the month following the month of purchase.

Regarding the use tax on purchases from January 1, 2005 to March 2, 2005, payment of this assessment satisfies Petitioner's obligation for that tax and he need not declare the use tax for these purchases on her 2005 income tax return.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2005.

Irene Rees
Administrative Law Judge

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BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner