

04-0900
Audit
Signed 02/08/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	04-0900
)		
v.	)	Account No.	#####
)		
AUDITING DIVISION OF	)	Tax Type:	Sales Tax
THE UTAH STATE TAX)		
COMMISSION,	)	Audit Period:	7/1/00 – 6/30/03
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, President
PETITIONER REPRESENTATIVE 2

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from Auditing Division
RESPONDENT REPRESENTATIVE 3, from Auditing Division
RESPONDENT REPRESENTATIVE 4, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on January 12, 2005.

The Petitioner is in the printing business. Among the items sold by the Petitioner are printed items and associated pre-press materials. Pursuant to an audit, Auditing Division (“Division”) issued an Amended Statutory Notice of sales tax liability to the Petitioner, which Petitioner timely appealed. The only portion of the audit assessment at issue concerns the Petitioner’s sales of pre-press materials to its resale customers.

The Division asserts that the Petitioner is liable for sales and use tax on pre-press materials associated with printed items it sold tax-free to its resale customers. The Petitioner asserts that its customers purchased the pre-press materials tax-free and that it took the necessary steps to sell them the items as such. The Division asserts that the Petitioner is liable because it did not inform the customers that their purchase included reusable pre-press materials in accordance with Utah Admin. Code R865-19S-80(B)(3) (“Rule 80”). Without such notice, the Division argues, the resale customer may believe that it did not purchase pre-press materials on which it may itself be subsequently liable for tax.

The Petitioner believes that it has complied with Rule 80(B)(3) because it provided a written bid sheet to its customers that included a line item identifying the cost of the pre-press materials. The Division asserts, however, that this written bid sheet does not, as required by Rule 80(B)(3), “[state] that reusable pre-press materials are included in the purchase.” When ownership of the printed items is transferred at the time of sale, the Petitioner presents an invoice with no separate line itemization for pre-press materials and no statement such materials are included in the purchase. While the Petitioner contends that the bid sheet provides such notice, the Division responds that a resale customer under these circumstances may not realize that it has purchased pre-press materials, instead believing that it is reimbursing the Petitioner for items the Petitioner consumed to produce the printing job.

The Division states that the Petitioner was given an opportunity to contact its customers to have them confirm that they accepted responsibility for the tax on the pre-press

materials under these circumstances. It further states that the only sales remaining at issue are those where the customer did not affirmatively accept liability.

APPLICABLE LAW

To administer the taxation of printers and its sales of pre-press materials, the Tax Commission has adopted Rule 80. The audit period at issue is July 1, 2000 through June 30, 2003. During the audit period, on December 19, 2000, the Commission amended Rule 80, including those provisions affecting pre-press materials. Prior to this amendment, "Old Rule 80" provided, in part:

....

E. Printers may purchase tax free reusable pre-press materials . . . used in the preparation of printed matter for resale provided title to said tangible personal property passes to the customer.

....

2. The printer's invoice must contain a statement on its face, that states that reusable pre-press materials associated with that transaction are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of those items if so desired.

....

"New Rule 80" became effective on December 19, 2000. Its provides for the taxation of pre-press materials, as follows:

...

B.3. A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

...

Upon the adoption of New Rule 80, Tax Commission Bulletin 16-00 became effective and addressed the sale of pre-press materials as follows:

....

Pursuant to [New Rule 80], a printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. The statement need not describe the pre-press materials, and may not restrict the purchaser from taking physical possession of those materials.

....

DISCUSSION

The Division argues that under both Old Rule 80 and New Rule 80, the Petitioner did not provide its resale customers adequate notice that its tax-free purchases included reusable pre-press materials. The Commission is aware that a resale customer who purchases printed items and pre-press materials tax-free for resale does not always sell the pre-press materials to the final consumer of the printed materials. Under such circumstances, the resale customer should remit use tax on its consumption of the pre-press materials, but often does not. Both Old Rule 80 and New Rule 80 contain provisions to ensure that a printer provides notice to its resale customers that they have purchased reusable pre-press materials and, thus, may be liable for tax on the materials.

Old Rule 80. For those transactions prior to December 19, 2000, the Commission must apply Old Rule 80 to determine whether the Petitioner is liable for the taxes assessed by the Division. Section E.2. of Old Rule 80 requires a printer's **invoice** to contain a statement on its face that reusable pre-press materials associated with the transaction are included with the purchase. The Petitioner's invoices did not contain such a statement. For this reason, the Petitioner did not provide adequate notice as required under Old Rule 80. Accordingly, for those sales at issue during the audit

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period that occurred prior to December 19, 2000, the Petitioner is liable for tax on the pre-press materials.

New Rule 80. This rule applies to those sales in the audit period occurring on or after December 19, 2000. Section B.3. of New Rule 80, as well as Tax Bulletin 16-00, requires a printer selling pre-press materials tax-free to provide its resale customers a written document that “states that reusable pre-press materials are included with the purchase.” The Petitioner provided a written document to its customers, a bid sheet, on which it itemized the pre-press materials incorporated into the cost of the bid. However, the information on this sheet does not distinguish whether the resale customer is purchasing reusable pre-press materials or only reimbursing the Petitioner for consumed pre-press materials. Under the latter circumstance, the Petitioner, not the resale customer, is responsible for sales and use tax on the pre-press materials. For these reasons, the Commission finds that the itemization of the pre-press materials on the bid sheet, without any further explanation, was not adequate notice to satisfy New Rule 80(B)(3).

The Commission also notes that although taxing statutes are generally construed in favor of the taxpayer and against the taxing authority, the Utah Supreme Court has held that statutes providing tax exemptions are construed strictly against the taxpayer. *Parson Asphalt Prods., Inc. v. Utah State Tax Comm'n*, [617 P.2d 397](#), 398 (Utah 1980). The issue before the Commission involves a sales tax exemption. For these reasons, the Commission finds that the Petitioner is also liable for sales and use tax on its tax-exempt sales of pre-press materials on or after December 19, 2000.

The Petitioner stated that it believed its customers knew they were purchasing reusable pre-press materials when they received the bid sheets on which the pre-press materials were

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listed. The Petitioner was allowed an opportunity to prove its assertion and contacted its customers for confirmation. Many of its customers confirmed that they had taken responsibility for the tax associated with the pre-press materials purchased from the Petitioner. The Division states that it no longer considers the Petitioner liable for these sales. The Commission agrees that the Petitioner is not liable for the tax on these sales because the resale customers have confirmed that it has notice of its liability for the tax. However, for those sales where the resale customer did not confirm that it purchases reusable pre-press materials from the Petitioner, the Petitioner is responsible, as discussed earlier.

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Petitioner is liable for sales and use tax on its sales of pre-press materials to tax-exempt resale customers, except in those instances where the Petitioner's resale customers accepted responsibility for the taxes on the pre-press materials in writing. It is so ordered.

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

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

DATED this _____ day of _____, 2005.

Kerry R. Chapman
Administrative Law Judge

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

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