

04-1265
Revocation
Signed 07/06/2005

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER SERVICES DIVISION OF)	
THE UTAH STATE TAX COMMISSION,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 04-1265
)	Account No. #####
RESPONDENT,)	Tax Type: Sales Tax
)	
Respondent.)	Judge: Davis

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner:	PETITIONER REPRESENTATIVE 1, Assistant Attorney General PETITIONER REPRESENTATIVE 2, from the Taxpayer Services Division PETITIONER REPRESENTATIVE 3, from the Taxpayer Services Division PETITIONER REPRESENTATIVE 4, from the Taxpayer Services Division
For Respondent:	RESPONDENT REPRESENTATIVE, Attorney at Law

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 14, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. This matter is before the Utah State Tax Commission due to the request for revocation of sales tax license no. #####. Petitioner alleges that the sales tax license was issued in error and in contravention of Utah Code Ann. §59-12-106.

2. The principal of Respondent is (X), who previously operated another business by the name of "COMPANY." COMPANY was substantially delinquent in paying sales tax, and the sales tax license for that business was revoked. Further, (X) was assessed a personal non-payment penalty requiring that she

personally pay the delinquent sales tax amounts due from that business. Some payments have been made on that tax liability, but there is still a substantial amount due and owing from the prior business of COMPANY.

3. After the sales tax license for COMPANY was revoked, (X) formed a new corporation by the name of RESPONDENT. The new corporation, RESPONDENT, applied for a sales tax license with the new corporation as the owner of the business. Based on that application, a new sales tax license was issued to RESPONDENT.

4. Petitioner's representatives stated that the issuance of the sales tax license to RESPONDENT, was in error. They further represented that a cross-reference check should have been made to determine if (X) had an outstanding liability, because she was required to provide her name, address, and social security number as the officer or owner of the corporation.

5. All of the evidence presented at the hearing indicates that as of that date, RESPONDENT was in total compliance with the Sales Tax Act. There were no delinquencies in either filing or paying the sales tax amounts. Following the hearing, and just prior to the issuance of this Order, information was conveyed to the Administrative Law Judge that RESPONDENT may no longer be in compliance with the Sales Tax Act. However, to convey such information to the Administrative Law Judge following the hearing, but prior to the issuance of this Order, was an inappropriate action by a representative of Petitioner. Such information is not a basis for any actions taken in this proceeding.

APPLICABLE LAW

Utah Code Ann. §59-12-106 provides in relevant part as follows:

(1)(a) It is unlawful for any person required to collect a tax under this chapter to engage in business within the state without first having obtained a license to do so.

(b) The license described in Subsection (1)(a):

(i) shall be granted and issued by the commission;

(ii) is not assignable;

(iii) is valid only for the person in whose name the license is issued;

(iv) is valid until:

- (A) the person described in Subsection (1)(b)(iii):
 - (I) ceases to do business; or
 - (II) changes that person's business address; or
- (B) the license is revoked by the commission; and
- (v) shall be granted by the commission only upon an application that:
 - (A) states the name and address of the applicant; and
 - (B) provides other information the commission may require.

••••

- (e)(i) The commission shall, on a reasonable notice and after a hearing, revoke the license of any person violating any provisions of this chapter.
- (ii) A license may not be issued to a person described in Subsection (1)(e)(i) until the person has complied with the requirements of this chapter.

Utah Code Ann. §59-12-102(49) defines "person" as follows:

(49) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

DISCUSSION

Petitioner argues that the sales tax license of RESPONDENT, should not have been issued because of the provisions of Utah Code Ann. §59-12-106(1)(e) which prevents a sales tax license from being issued to a person who's license has been revoked because of failure to comply with the requirements of the Sales Tax Act. Petitioner further argues that the above-referenced statute would prevent (X) from obtaining the license for RESPONDENT because she is personally in violation of the Sales Tax Act because of the liability of COMPANY. Petitioner, therefore, argues that (X) and her new corporation were prohibited from obtaining a new sales tax license. The theory of Petitioner is that owners and officers of a corporation are statutorily responsible for acting on behalf of the corporation to assure that the tax is collected and remitted to the Utah State Tax Commission, and therefore, it is argued that the owners and officers are responsible to fulfill the responsibilities stated in Utah Code Ann. §59-1-302(2). Petitioner argues for this interpretation so that the Tax Commission can fulfill its "statutory and constitutional responsibility to supervise and administer the tax code," including the collection and remittance of sales tax.

Respondent's attorney obviously disagrees with the interpretation of the law set forth by Petitioner's attorney. The argument of Respondent is that (X) did not apply for a sales tax license, but instead, the corporation, RESPONDENT, was the "person" which applied for the sales tax license. Further, it is undisputed that RESPONDENT, at the time of the hearing, was not in violation of any of the provisions of the Utah Sales Tax Act. Therefore, the owner of the sales tax license, RESPONDENT, is not in violation, and there is no statutory basis for revoking the sales tax license.

Utah Code Ann. §59-12-102(49), clearly includes a "corporation" as a "person" for purposes of the Sales Tax Act. Utah Code Ann. §59-12-106 talks in terms of "any person" violating the provisions of the chapter may have the license revoked. In this case, the statutes are clear and unambiguous that RESPONDENT, the corporation was the applicant for the sales tax license, and the sales tax license was issued to the corporation. Therefore, the sales tax license may only be revoked by the Commission if the corporation, RESPONDNET, is in violation of the Sales Tax Act as of the time of the hearing. In this instance, there was no such violation by RESPONDENT, as of the time of the hearing. If there have been violations following the hearing, those matters must be dealt with in a separate proceeding based upon a separate petition and evidence which may be presented at such hearing. The evidence presented at the hearing was that the sales tax license was applied for by RESPONDENT, and that RESPONDENT was not in violation of the Sales Tax Act.

DECISION AND ORDER

Based upon the foregoing, Petitioner's request to declare sales tax license no. ##### invalid, or to revoke such license, is hereby denied. It is so ordered.

DATED this _____ day of _____, 2005.

G. Blaine Davis
Administrative Law Judge

Appeal No. 04-1265

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

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

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