

04-1442
Audit
Signed 06/12/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 04-1442
)	Account No. #####
)	
AUDITING DIVISION OF)	
THE UTAH STATE TAX)	Tax Type: Sales Tax
COMMISSION,)	Audit Period: 10/01/01 – 07/31/04
)	
Respondent.)	Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, Manager, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 7, 2006. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is sales tax.
2. The period in question is 10/01/01 – 7/31/04.
3. Petitioner used software (X) to process transactions it conducted. The software had resale numbers programmed into it. If a customer with a resale number used it in a transaction, the resale number printed on the receipt. However, the software did not retain information on the transaction for future reporting purposes. The provider of the software is considering including this feature in future releases of its

software.

4. As a result, Petitioner has no record of cash transactions associated with resale numbers.

5. Petitioner presented evidence showing exempt sales account for approximately three percent of its total sales.

6. Respondent conducted an audit, beginning with the period ending on October 31, 2001, and concluding with the period ending July 31, 2004. In conducting the audit, Respondent matched purchases to exemption certificates when it could. Cash transactions could not be matched. The audit disallowed between 70 and 80 percent of the sales listed as exempt because records did not establish they were exempt.

7. The audit showed \$\$\$\$\$ in additional tax due. Interest, calculated to December 4, 2004, was \$\$\$\$\$.

APPLICABLE LAW

During the audit period, Utah Code Ann. §59-12-106(2)¹ provided, as follows:

For the purpose of the proper administration of this chapter and to prevent evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for delivery in this state is sold for storage, use, or other consumption in this state unless the person selling the property, item, or service has taken from the purchaser an exemption certificate signed by and bearing the name and address of the purchaser to the effect that the property, item, or service was exempted under Section 59-12-104. The exemption certificates shall contain information as prescribed by the commission.

The Commission has adopted Utah Admin. Rule R865-19S-23 ("Rule 23") to administer exemption transactions, which sets forth certain vendor's responsibilities concerning its exempt sales. Although the Rule has since been amended, the rule in place during the audit period provides, in pertinent part, as follows:

A. Taxpayers selling tangible personal property or services to customers exempt

¹ Since the audit period, the provision has been amended and renumbered UCA §59-12-106(3).

from sales tax are required to keep records verifying the nontaxable status of those sales. Records shall include:

1. sales invoices showing the name and identity of the customer; and
2. exemption certificates for exempt sales of tangible personal property or services if the exemption category is shown on the exemption certificate forms.

....

E. The burden of proving that a sale is for resale or otherwise exempt is upon the vendor. If any agent of the Tax Commission requests the vendor to produce a valid exemption certificate or other similar acceptable evidence to support the vendor's claim that a sale is for resale or otherwise exempt, and the vendor is unable to comply, the sale will be considered taxable and the tax shall be payable by the vendor.

UCA §59-1-401(10) provides that “[u]pon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.”

CONCLUSIONS OF LAW

Under 59-12-106 and Rule 23, in the absence of records establishing sales were exempt, vendors are liable for sales tax. Oral statements are not a substitute for accurate record keeping. Tummuru Trades, Inc. v. State Tax Comm’n, 802 P.2d 715 (Utah 1990).

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the audit. Petitioner is responsible to pay \$\$\$\$\$, plus accrued interest. It is so ordered. Should Petitioner not appeal this decision to the courts, Petitioner may contact the Taxpayer Services Division at ##### to discuss payment arrangements.

DATED this ____ day of _____, 2006.

R. Spencer Robinson
Administrative Law Judge

Appeal No. 04-1442

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 _____, 2006.

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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