

05-0972
Refund Request
Signed 01/31/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioners,)	AND FINAL DECISION
)	
v.)	Appeal No. 05-0972
)	Account No. #####
Auditing Division of the Utah State Tax)	
Commission,)	Tax Type: Sales
)	Tax Period: May 2002 – February 2005
Respondent.)	
)	Judge: Rees

Presiding:

Commissioner Marc Johnson
Irene Rees, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Petitioner
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, Audit Manager
 RESPONDENT REPRESENTATIVE 3, Deputy Director, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 5, 2006. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is sales tax.
2. The audit period runs from May 2002 through February 2005.
3. The only portion of the audit under appeal concerns the uncollected tax on Petitioner's charges for its "tire disposal fee."
4. Petitioner does not dispute that the "tire disposal fee" is taxable, but makes a claim for relief based on reliance on incorrect advice from a Tax Commission employee.

APPLICABLE LAW

Unless otherwise exempt by law, retail sales in Utah are subject to Utah sales tax under Utah Code Ann. Section 59-12-103.

Under Utah Administrative Rule R865-19S-93, waste tire recycling fees are not subject to tax.

DISCUSSION

Petitioner operates two tire stores. As part of its tire sales, Petitioner charges customers the waste tire recycling fee, as required by law, as well as a “tire disposal fee,” which is a discretionary charge that Petitioner passes through to its customers. The waste tire recycling fee is not subject to tax. The tire disposal fee is part of the total purchase price of tires and, because there is no specific tax exemption for this charge in the law, it is subject to sales tax.

In October 2002, PETITIONER REPRESENTATIVE noticed that there was a difference between the stores in how the tax was calculated. In one store, the tax was calculated on the total sale amount, including the tire disposal fee. In the other store, the tax was calculated on the sales price of the tires, not including the tire disposal fee.¹ PETITIONER REPRESENTATIVE states that he contacted the Tax Commission by phone and asked which method of calculation was correct. He states that he was advised that the tire disposal fee was not subject to tax. Therefore, he corrected the accounting systems to conform with that advice. From that point on, until he was contacted for an audit in 2005, Petitioner did not collect tax on the tire disposal fee. During the process of the audit, the Auditing Division informed him that the waste tire

¹ Apparently there were some sales invoices indicating that tax had been applied to the waste tire recycling fee as well, but the Auditing Division identified those errors and credited Petitioner for the overpayment of tax where appropriate.

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recycling fee is not subject to tax, but the tire disposal fee is subject to tax. Petitioner immediately corrected his systems in both stores to conform to the Auditing Division's guidance.

Petitioner does not argue that the tire disposal fee is exempt from tax. Instead he asks for relief from the assessment for uncollected tax, plus interest, because he acted on advice from the Tax Commission. Unfortunately, PETITIONER REPRESENTATIVE did not document his phone call to the Commission and he could not remember who he spoke to when he called.

The Division argues that even if PETITIONER REPRESENTATIVE contacted the Tax Commission and received erroneous advice, he should not be relieved of the assessment. Furthermore, in the hearing, PETITIONER REPRESENTATIVE confused the term "tire disposal fee" with "waste tire fee" and other terms. The Division suggests that the Tax Commission employee who advised PETITIONER REPRESENTATIVE may have assumed that PETITIONER REPRESENTATIVE was inquiring about the waste tire fee, which is exempt from tax.

DECISION AND ORDER

There is no question that the tax is due on the Petitioner's tire disposal fee and the Petitioner does not dispute that. He is asking, however, for relief from the tax and interest because he acted in a way that he believed would put him in compliance with the law.

The Tax is due by law and the Commission has no discretion under these circumstances to abate it. However, the Commission has some discretion to relieve the Petitioner of the interest assessment. In this case, it is clear that the Taxpayer made inquiries about his accounting systems and made changes to the systems to conform to his understanding of the advice he was given. He also made immediate changes to his systems when the Division alerted him to his error. The Commission acknowledges the Petitioner's efforts to comply with the law and abates the interest assessment.

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DATED this ____ day of _____, 2006.

Irene Rees
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 _____, 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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