

05-1250  
Audit  
Signed 12/30/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>ORDER FROM INITIAL HEARING</b>
	)	
Petitioner,	)	Appeal No. 05-1250
	)	
v.	)	
	)	Tax Type: Cigarette/Use Tax
AUDITING DIVISION OF THE UTAH	)	
STATE TAX COMMISSION,	)	Tax Year: 2003-1005
	)	
Respondent.	)	Judge: Rees
	)	

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**Presiding:**

Irene Rees, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, Petitioner  
For Respondent: RESPONDENT REPRESENTATIVE, Audit Manager,  
Auditing Division

STATEMENT OF THE CASE

The Division issued an assessment against Petitioner for unpaid cigarette tax and use tax on purchases of cigarettes from an out of state vendor via the internet. Petitioner admits that she purchased these cigarettes, but states that she did not know that tax was due on the purchases. Petitioner also states that she is aware that Utahns spend money in STATE and those purchases are not taxed. Moreover, the State audit of all internet sales into Utah to ensure that cigarette sales are not treated in a discriminatory manner. Finally, the Tax Commission should go after the vendor who failed to collect the tax, not the consumers.

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 15<sup>th</sup> of the month following the calendar month in which the cigarettes were 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, COMPANY is required to report its Utah internet sales to the Tax Commission. The company recently came into compliance with this reporting requirement. Upon receiving that 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 she made these purchases, but she states she was unaware that tax was due. Ignorance of the law does not relieve Petitioner from the tax.

Petitioner also asserts that imposition of this tax is discriminatory. We disagree. The law applies equally to all untaxed purchases delivered to a purchaser in Utah. Petitioner mentioned that she is aware of people buying items in STATE without paying tax, but STATE purchases are not subject to Utah sales and use tax. Therefore, those purchases are not relevant to our decision here.

DECISION AND ORDER

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. The Commission affirms the assessment for the cigarette tax and the use tax and interest on the use tax. 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 15<sup>th</sup> 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 15<sup>th</sup> of the month following the month of purchase.

Regarding the use tax on purchases in January of 2005, payment of this assessment satisfies Petitioner's obligation for that tax. She need not declare the use tax for these purchases on her 2005 income tax return.

Petitioner stated that this lump sum assessment is a financial burden. Petitioner may contact TAX COMMISSION EMPLOYEE of the Taxpayer Services Division (#####) to make payment arrangements.

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

Appeal No. 05-1250

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.

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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 \_\_\_\_\_, 2005.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

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