

05-1251  
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. 05-1251
	)	
v.	)	
	)	Tax Type: Cigarette/Use Tax
AUDITING DIVISION OF THE UTAH	)	
STATE TAX COMMISSION,	)	Tax Year: 2003-2005
	)	
Respondent.	)	Judge: Rees
	)	

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**Presiding:** Irene Rees, Administrative Law Judge

**Appearances:**

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

STATEMENT OF THE CASE

The Division issued an assessment notice to Petitioner, assessing cigarette and use tax on purchases of untaxed cigarettes that were delivered to Petitioner in Utah during the period of August 5, 2003 to February 21, 2005. The cigarette tax assessment is in the amount of \$\$\$\$\$ (including \$\$\$\$\$ in interest), and the use tax assessment amounts to \$\$\$\$\$ (including \$\$\$\$\$ in interest). No penalty was assessed. Petitioner filed an appeal of the assessment and appeared at a hearing on November 17, 2005

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. The company recently came into compliance with the law and delivered its reports to the Tax Commission. Upon receiving the reports 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. She indicates that had she known tax was due, she would have paid the tax at the time. This lump sum assessment imposes a financial burden on her.

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. Therefore, the Commission affirms the assessment of the tax, but directs the Division to recalculate the interest assessment 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

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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.

Petitioner may my contact TAX COMMISSION EMPLOYEE of the Taxpayer Services Division (#####) to discuss payment arrangements or to determine whether she qualifies for an Offer in Compromise agreement.

Regarding the use tax on purchases from January 1, 2005 to February 21, 2005, payment of this assessment satisfies Petitioner's obligation for that tax and he need not declare the use tax for these purchases on her 2005 income tax return.

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Irene Rees  
Administrative Law Judge

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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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