

05-1323
Audit
Signed 03/13/2006

BEFORE THE UTAH STATE TAX COMMISSION

| | | |
|-------------------------------|---|--------------------------------|
| PETITIONER, |) | ORDER |
| |) | |
| Petitioner, |) | Appeal No. 05-1323 |
| |) | |
| v. |) | |
| |) | Tax Type: Cigarette/Use Tax |
| AUDITING DIVISION OF THE UTAH |) | |
| STATE TAX COMMISSION, |) | Tax Year: 11/17/04 – 3/12/2005 |
| |) | |
| Respondent. |) | Judge: Rees |
| |) | |

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 November 17, 2004 to March 12, 2005. The Division later reversed the assessment based on language in the administrative rule that appears to exempt non-residents from the imposition of the tax. Petitioner is not a Utah resident.

The matter came before the Commission in an Initial Hearing on December 15, 2005. Petitioner did not appear. At that time, the Division indicated that it sent a Memorandum of Understanding to the Petitioner asking for agreement with its action in reversing the assessment. Petitioner never returned the agreement.

The Petition for Redetermination indicated that Petitioner preferred a hearing on the record. Therefore, the fact that she did not participate in the hearing shall not result in a default. The record indicates that the Division reversed the audit, and the Commission affirms that action. The Petitioner has no liability for the cigarette and use taxes at issue here.

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:

Appeal No. 05-1323

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 _____, 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

RI/05-1323.cig.ini