

05-1347  
Audit  
Signed 02/14/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>ORDER FROM INITIAL HEARING</b>
	)	
Petitioner,	)	Appeal No. 05-1347
	)	
v.	)	
	)	Tax Type: Cigarette/Use Tax
AUDITING DIVISION OF THE UTAH	)	
STATE TAX COMMISSION,	)	Tax Year: 2004
	)	
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 he purchased these cigarettes, but states that he purchased them for a friend who did not have a credit card. He did not know that tax was due on the purchases, as the invoice made no mention of additional charges. Petitioner is also concerned that there may be a difference in the treatment of use tax on cigarette purchases versus purchases of other taxable items over the internet.

APPLICABLE LAW

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 §59-14-205. 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.

Utah Code §59-14-303 (3) and Utah Admin. Rules R865-20T-1 and R865-20T-2.

Utah law also 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.

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 tax was due. Utah Code §59-1-204 (5).

#### DISCUSSION

Cigarette purchases in Utah are subject to cigarette tax and sales and use tax. Purchases of cigarettes from an out of state vendor for delivery into Utah are subject to Utah taxes. If the vendor does not collect the tax at the time of purchase, the purchaser is required to report and remit the tax.

Under federal law, the Jenkins Act, COMPANY is required to report its Utah internet sales of cigarettes. Upon receiving that report and identifying the Petitioner's untaxed cigarette purchase, the Division issued an assessment for the unpaid cigarette tax and the unpaid use tax on the transaction. Petitioner does not deny that he made these purchases, but he states he purchased the cigarettes for a friend and he was unaware that tax was due.

The fact that Petitioner used his credit card to purchase these cigarettes for a friend does not relieve him of liability for the tax, but Petitioner may have recourse to recover the amount of the assessment from his friend. Nor is ignorance of the tax law a defense. In fact, the Tax Commission has very little latitude to waive tax and interest that is due under Utah law except in cases where the liability resulted from Tax Commission error. There is no Tax Commission error in this case. The Commission has liberal authority to waive penalties, but no penalties were imposed in this case.

DECISION AND ORDER

The Commission affirms the assessment. As discussed in the hearing, the Division will make an adjustment to the interest assessment so that the interest is calculated from the 15<sup>th</sup> day of the month following the assessment through the billing date.

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

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

Appeal No. 05-1250

Palmer DePaulis  
Commissioner

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Marc B. Johnson  
Commissioner