

06-0825
Sales Tax
Signed 02/14/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	06-0825
v.)	Account Nos.	#####
)		
AUDITING DIVISION OF THE)	Tax Type:	Sales Tax
UTAH STATE TAX)		
COMMISSION,)	Judge:	Phan
)		
Respondent.)		

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Chief Financial Officer
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on November 14, 2006. Petitioner is appealing an audit assessment in the amount of \$\$\$\$ in additional sales tax plus the interest incurred thereon, for the period of April 1, 2002 through March 31, 2005. It was Petitioner's position that this amount was merely an accounting error, while Respondent argues that Petitioner had not provided sufficient documentation to support its contention.

APPLICABLE LAW

Utah Law provides for sales tax at Utah Code Sec. 59-12-103(1)(b)(i)(B)(I) as follows in pertinent part:

A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions: whether the following are municipality or privately owned, to a: telephone service provider for: (ii)(B) telephone service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state.

The law requires that the seller collect and remit the tax to the state as follows in pertinent part at Utah Code Sec. 59-12-107(2):

(a) Except as provided in Sections 59-12-107.1 through 59-12-107.4, a tax under this chapter shall be collected from a purchaser.

. . .

(d) A seller is not required to maintain a separate account for the tax collected, but is considered to be a person charged with receipt, safekeeping, and transfer of public moneys.

(e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the benefit of the state and for payment to the commission in the manner and at the time provided for in this chapter.

(f) If any seller, during any reporting period, collects as a tax an amount in excess of the lawful state and local percentage of total taxable sales allowed under this chapter, the seller shall remit to the commission the full amount of the tax imposed under this chapter, plus any excess.

Utah Admin. Rule R865-19S-20(B) provides that sales tax is to be remitted on the accrual basis as follows:

Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

Utah Admin. Rule R865-19S-22(A) discusses the records that are required to be kept in regards to sales and use tax as follows:

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall: 1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in connection with tangible personal property made in this state, irrespective of

whether the retailer regards the receipts to be taxable or nontaxable; 2. show all deductions allowed by law and claimed in filing returns; 3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and 4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

DISCUSSION

Petitioner and its parent company and a related subsidiary billed sales tax to their customers pursuant to Utah Code Sec. 59-12-103. According to Petitioner's representative the accounting was a "real mess" in 2001 and tax accruals and the payments to the counties were being posted to the wrong accounts. They had independent auditors review the accounts and prepare an audited financial report for the companies for the years ending December 31, 2001 and December 31, 2002. The auditors tried to reconcile the postings of sales tax accruals and payments between the three companies and indicate that there were errors resulting from balance sheet mis-posting to different companies.

According to Petitioner's representative the independent auditors found that they were unable to reconcile the accounts in the amount at issue. However, the information from the independent auditors is insufficient to support that this \$\$\$\$\$, that had been claimed as sales tax on Petitioner's accounts, should be written off as requested by Petitioner. Petitioner's representative provided a two-page document to the Division that he purported to be from the independent auditors. The first page has an explanation that is initialed but does not indicate who prepared the summary. The second page is an accounting schedule. In the explanation it states, "Approximately \$\$\$\$\$ of the mispostings could not be reconciled and was run through the income statement at PETITIONER. We concur with the client's proposed entry as the amount of the unreconciled misposting is immaterial for investigation." From this and the explanation provided by

Petitioner's representative, Petitioner apparently ended up with more sales tax posted to their account than they could account for on their books. Additionally Petitioner argued that the adjustment was for taxes accrued in 2001 prior to the audit period, despite that the summary explanation indicated the errors occurred in 2002.

In looking at the issue, the information provided is not sufficient to support Petitioner's contention that the tax would not be owed. The explanation from the independent auditors indicated there was a discrepancy between what had been posted to the account and what should have been posted, but it was immaterial (for their purposes) for further investigation. It was unclear if the amount had actually been collected as tax, which Petitioner is required to remit to the state under Utah Code Sec. 59-12-107(2), regardless, if it was more than should have been collected. If this amount had not actually been collected from the customers as a tax and had been posted to the sales tax account in error, or accounted for more than once, Petitioner may be correct in its position. However, Petitioner needs to maintain adequate accounting books and records to support its contention. Upon review of the information provided at the hearing, it is just insufficient to account for the tax at issue.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the audit assessment of additional sales tax and interest for the period of April 1, 2002 through March 31, 2005. It is so ordered.

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

Appeal No. 06-0825

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

DATED this _____ day of _____, 2007.

Jane Phan
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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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