

07-0123
Sales Tax/ P&I
Signed 07/30/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	07-0123
v.)		
	)	Account No:	#####
TAXPAYER SERVICES	)	Tax Type:	Sales Tax/ P&I
DIVISION OF THE UTAH	)	Tax Year:	2004 -2005
STATE TAX COMMISSION,)		
	)	Judge:	Robinson
Respondent.)		

Presiding:
R. Spencer Robinson, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on March 19, 2007.

At issue is whether the Petitioner is liable for sales tax on the sale of software, in addition to penalty and interest for failure to file and pay.

APPLICABLE LAW

Utah Code Ann. § 59-1-401(11)

The Tax Commission is granted the authority to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause.

DISCUSSION

Petitioner opened her business in 2004. The business sold software to health care professionals. Petitioner called the Tax Commission to ask whether the sale of the software was subject to sales tax. She explained her business and described the software to a Commission employee. The employee advised Petitioner that she did not have to collect and remit sales tax on the sale of the software, as it was personalized for each physician and type of practice.

Petitioner made two sales of the software. She did not collect sales tax. Sometime after receiving advice from a Commission employee, Petitioner attended a business owner's tax seminar and learned sales tax should have been collected and remitted on the two sales. Petitioner filed the required quarterly sales tax forms, Respondent reviewed them and took the position that Petitioner should have collected and remitted sales tax. It also assessed penalties and interest.

In 2005, PETITONER REPRESENTATIVE'S State income tax refund was applied to the balance. The remaining balance owing in sales tax is \$\$\$\$\$.

At the hearing, PETITIONER REPRESENTATIVE agreed to pay the remaining sales tax. The Respondent agreed to recommend waiver of the penalties and interest based on the advice given to PETITIONER REPRESENTATIVE.

DECISION AND ORDER

Based upon the foregoing, the Commission finds Petitioner is responsible for payment of the sales tax on the software it sold. There is no provision in the law for waiving taxes. However, erroneous advice establishes reasonable cause to waive penalties and interest. The Commission accepts the Respondent's recommendation, and waives the penalties and interest in this case. 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

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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:

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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 _____, 2007.

R. Spencer Robinson
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

Notice: If a Formal Hearing is not requested as discussed above, failure to pay any remaining balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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