07-0269
AUDIT
TAX YEARS: 2003, 2004
SIGNED: 03-02-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 07-0269 Account No. ##### Tax Type: Sales and Use Tax Audit Period: 04/01/03 – 12/31/04 Judge: Chapman

GUIDING DECISION

Presiding:

R. Bruce Johnson, Commission Chair
Kerry Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., CPA
For Respondent: RESPONDENT REP 1, Assistant Attorney General
RESPONDENT REP 2, from Auditing Division

RESPONDENT REP 3, from Auditing Division
RESPONDENT REP 4, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 26, 2010. Based upon the evidence and testimony presented by the parties, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is sales and use tax.

2. The audit period at issue is April 1, 2003 through December 31, 2004.

3. On February 6, 2007, Auditing Division ("Division") issued a Statutory Notice - Sales and Use Tax ("Statutory Notice") to PETITIONER ("PETITIONER" or "taxpayer") for the audit period, in which it imposed $$$$$ in additional sales and use tax and $$$$$ in interest (calculated through March 8, 2007), for a total assessment of $$$$$. (Undisputed Fact from Commission's April 30, 2009 Order Denying Petitioner's Request for Summary Judgment ("Summary Judgment Order")).

4. Most issues involving the audit assessment have been resolved. Remaining at issue is whether PETITIONER itself may receive a refund of excess taxes that it erroneously collected from its customers and remitted to the Tax Commission during the audit period.

5. During the audit period, PETITIONER erroneously collected from its customers approximately $$$$$ of sales and use taxes on nontaxable transactions. PETITIONER remitted these "overcollections," or excess taxes, to the Commission, as required under Section 59-12-107(2)(f). In its audit assessment, the Division determined that PETITIONER had failed to collect, or "undercollected," sales and use taxes on other transactions. The amount of undercollected taxes on sales, as originally determined by the Division, far exceeded the $$$$$ of excess overcollections. As a result, the Division offset the undercollected taxes on sales by the entire amount of excess overcollections, as allowed under

Utah Admin. Rule R865-19S-4(C)("Rule 4"). (Undisputed Fact from Summary Judgment Order).

6. Since the appeal was filed, however, the Division has agreed to amend its audit to remove most of the sales transactions on which it had assessed sales and use tax. At the hearing on the Summary Judgment Request, RESPONDENT REP 4 testified that the Division now shows that for the audit period, PETITIONER owes $$$$$ in undercollected taxes on taxable sales and $$$$$ of sales and use taxes on unreported taxable purchases. The $$$$$ of undercollected taxes on sales is now less than the $$$$$ of overcollected taxes. The Division contends that it may only apply, as an offset, that portion of the overcollected taxes equal to the $$$$$ of undercollected taxes on sales. The Division claims that it is not authorized to refund the remaining $$$$$ of overcollected taxes to PETITIONER unless PETITIONER first provides evidence that it has refunded the overcollections to its customers or has set up a "trust account" to ensure that any refunded overcollections are forwarded to its customers. (Undisputed Fact from Summary Judgment Order).

7. PETITIONER has not refunded any of the $$$$$ in overcollections to its customers who paid the excess taxes. Nevertheless, PETITIONER asserts that the Division is required by law to refund to it the remaining $$$$$ of overcollections, after which it can refund the taxes to its customers.

8. On December 28, 2009, PETITIONER REP., PETITIONER's representative, submitted a Motion to Amend Petitioners and a Motion to Compel Denial of 2005 Thru (sic) 2007. In an Order dated January 12, 2010, the Commission informed the parties that it would address the two motions at the Formal Hearing.

9. In the first motion, the Motion to Amend Petitioners, PETITIONER REP. asked the Commission to amend the list of petitioners in this appeal to include not only PETITIONER (currently the only petitioner), but also certain customers of PETITIONER. Specifically, PETITIONER

REP. asked for the list of petitioners to be amended to include those PETITIONER customers who had overpaid sales taxes and had provided him powers of attorney. At the Formal Hearing, PETITIONER REP. claimed that he was in possession of powers of attorney from many of PETITIONER's customers. However, he did not submit them at the hearing. PETITIONER REP. was given until Monday, February 1, 2010 to provide copies of the powers of attorney that he claimed PETITIONER had received from its customers.

10. On February 1, 2010, PETITIONER REP. submitted 11 powers of attorney from entities that he contends overpaid sales tax to PETITIONER in years 2004 through 2007. The 11 powers of attorney were signed between January 20, 2010 and February 1, 2010 and authorize PETITIONER REP. to represent the taxpayers in Utah sales tax matters concerning tax collected by "PETITIONER / predecessor" for tax years 2004 through 2007. The taxpayers are identified on the powers of attorney, as follows:

	Company Name on Power of Attorney	Name of Person Who Signed Power of Attorney
1.	(No company listed)	PERSON A
2.	COMPANY A	PERSON B
3.	(No company listed)	PERSON C
4.	(No company listed)	PERSON D
5.	COMPANY B	PERSON E
6.	COMPANY C	PERSON F
7.	COMPANY D	PERSON G
8.	COMPANY E	PERSON H
9.	COMPANY F	PERSON I
10.	(No company listed)	PERSON J
11.	COMPANY G	PERSON K

11. In a document accompanying the 11 powers of attorney, PETITIONER REP. indicated that he was also including a power of attorney signed by WEBSITE. However, a power of attorney signed by WEBSITE was not included in the materials PETITIONER REP. submitted on

February 1, 2010.

12. In the document accompanying the 11 powers of attorney, PETITIONER REP. also indicated that: 1) PERSON A signed a power of attorney on behalf of a PETITIONER customer known as COMPANY H; 2) PERSON C signed a power of attorney on behalf of a customer known as COMPANY I; and 3) PERSON D signed a power of attorney on behalf of a customer known as COMPANY J; However, the names of the purported customers cited by PETITIONER REP. are not listed on the powers of attorney.

13. Furthermore, no party has submitted a list of PETITIONER's customers whom the Division determined to have overpaid sales tax to PETITIONER during the audit period. Neither party submitted a Statutory Notice at any proceeding in this matter. PETITIONER included a partial Statutory Notice in its Petition for Redetermination. However, this partial notice does not include any details concerning PETITIONER's customers and the amount of any overpayments or underpayments made by the customers during the audit period.

14. No evidence was submitted to show that any of PETITIONER's customers applied for a refund of sales tax within three years of any overpayment they may have made during the audit period.

15. In the second motion, the Motion to Compel Denial of 2005 Thru (sic) 2007, PETITIONER REP. stated that he had submitted a refund request for excess taxes that PETITIONER collected from its customers between 2005 and 2007. PETITIONER REP. asks the Commission to order the Division to respond to the request. The Division claimed that a refund request for periods outside the audit period at issue in this appeal should not be addressed in this appeal. Nevertheless, the Division disclosed that it had sent PETITIONER REP. an email on March 14, 2008 concerning the refund request for periods subsequent to the audit period; i.e., after December 31, 2004. However, the Division also

admitted that it had not included appeals rights with this email. At the April 1, 2009 Summary Judgment hearing in this matter, RESPONDENT REP 4, a Division auditor, testified that the Division had not yet responded to any refund request for the 2005, 2006 and 2007 tax years.

APPLICABLE LAW

1. Utah Code Ann. §59-12-107(2)(f) (2004)[1] provides that a seller must remit to the Tax Commission all taxes it collects from its customers, as follows:

> (2) (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.

2. Utah Code Ann. §59-12-110 provides for the refund of overpaid taxes, as follows in pertinent part:

> (1) (a) As soon as practicable after a return is filed, the commission shall examine the return.
> (b) If the commission determines that the correct amount of tax to be remitted is greater or less than the amount shown to be due on the return, the commission shall recompute the tax.
> (c) If the amount paid exceeds the amount due, the excess, plus interest as provided in Section 59-1-402, shall be credited or refunded to the taxpayer as provided in Subsection (2).
> (d) The commission may not credit or refund to the taxpayer interest on an overpayment under Subsection (1)(c) if the commission determines that the overpayment was made for the purpose of investment.
> (2) (a) If a taxpayer pays a tax, penalty, or interest more than once or the commission erroneously receives, collects, or computes any tax, penalty, or interest, including an overpayment described in Subsection (1)(c), the commission shall:
> (i) credit the amount of tax, penalty, or interest paid by the taxpayer against any amounts of tax, penalties, or interest the taxpayer owes; and
> (ii) refund any balance to the taxpayer or the taxpayer's successors, administrators, executors, or assigns.
> (b) Except as provided in Subsections (2)(c) and (d) or Section 19-2-124, a taxpayer shall file a claim with the commission to obtain a refund or credit under

1 The 2004 version of Utah law is cited, unless otherwise specified.

> this Subsection (2) within three years from the day on which the taxpayer overpaid the tax, penalty, or interest.
> . . . .
> (f) A taxpayer may obtain a refund under this Subsection (2) of a tax paid under this chapter on a transaction that is taxable under Section 59-12-103 if:
> (i) the sale or use was exempt from sales and use taxes under Section 59-12-104 on the date of purchase; and
> (ii) except as provided in Subsection (2)(c), the taxpayer files a claim for a refund with the commission as provided in Subsections (2)(b) through (e).

3. Effective July 1, 2004 and for the remainder of the audit period, Utah Code Ann. §59-12-110.1[2] provides for a refund or credit for taxes overpaid by a purchaser, as follows:

> (1) Subject to the other provisions of this section, a purchaser may request from a seller a refund or credit of any amount that:
> (a) the purchaser overpaid in taxes under this chapter; and
> (b) was collected by the seller.
> (2) (a) Except as provided in Subsection (2)(b), the procedure described in Subsection (1) is in addition to the process for a taxpayer to file a claim for a refund or credit with the commission under Section 59-12-110.
> (b) Notwithstanding Subsection (2)(a):
> (i) the commission is not required to make a refund or credit of an amount for which as of the date the refund or credit is to be given the purchaser has requested or received a refund or credit from the seller; and
> (ii) a seller is not required to refund or credit an amount for which as of the date the refund is to be given the purchaser has requested or received a refund or credit from the commission.
> (3) A purchaser may not bring a cause of action against a seller for a refund or credit described in Subsection (1):
> (a) unless the purchaser provided the seller written notice that:
> (i) the purchaser requests the refund or credit described in Subsection (1); and
> (ii) contains the information necessary for the seller to determine the validity of the request; and
> (b) sooner than 60 days after the day on which the seller receives the written notice described in Subsection (3)(a).
> (4) A seller that has collected a tax under this chapter that exceeds the amount the seller is required to collect under this chapter is presumed to have a reasonable business practice if the seller:

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2 Although Section 59-12-110.1 was enacted by the 2003 Legislature in Senate Bill 147 (2003), the bill provided that the effective date of the statute was July 1, 2004. Subsection (4) of the statute, as cited, has been amended subsequent to audit period.

> (a) collected a tax under this chapter that exceeds the amount the seller is required to collect under this chapter through the use of:
>
> (i) a provider certified by the state; or
>
> (ii) a system certified by the state, including a proprietary system certified by the state; and
>
> (b) has remitted to the commission all taxes that the seller is required to remit to the commission under this chapter.

4. Utah Admin. Rule R865-19S-4(C) ("Rule 4") provides for the offset of underpaid taxes against overcollected taxes in certain circumstances, as follows:

> C. A vendor that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the vendor collected the excess or remit the excess to the Commission.
>
> 1. A vendor may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.
>
> 2. A vendor may not offset an underpayment of tax on the vendor's purchases against an excess of tax collected.

5. Utah Rules of Civil Procedure Rule 19 ("Rule 19") provides for joinder of persons needed for just adjudication, as follows in pertinent part:

> (a) Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.
>
> (b) Determination by court whenever joinder not feasible. If a person as described in Subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided; third, whether a judgment rendered in the

> person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

DISCUSSION

First, it will be determined whether PETITIONER can receive a refund of all excess sales taxes that it erroneously collected from its customers and remitted to the Tax Commission. Second, the two motions that PETITIONER made on December 28, 2009 will be addressed.

Refund of Overcollected Sale Tax to Seller. During the audit period, PETITIONER erroneously collected approximately $$$$$ of sales tax from its customers on nontaxable sales. PETITIONER remitted these overcollections, or excess taxes, to the Commission, as required under Section 59-12-107(2)(f). In its audit assessment, the Division also determined that PETITIONER had "undercollected" taxes on other sales it made to its customers. The amount of undercollected taxes on sales, as originally determined by the Division, far exceeded the $$$$$ of excess overcollections. As a result, the Division originally "offset" PETITIONER's undercollected taxes by the entire $$$$$ amount of excess overcollections, as allowed under Rule 4(C)(1).

Since the appeal was filed, however, the Division has agreed to revise its audit to remove most of the sales transactions on which PETITIONER did not collect tax. After the revision, PETITIONER now owes $$$$$ in undercollected taxes on taxable sales and $$$$$ of sales and use taxes on unreported taxable purchases. The $$$$$ of undercollected taxes on sales is now less than the $$$$$ of overcollected taxes on sales. Pursuant to Rule 4(C), the Division contends that it may only apply, as an offset, that portion of PETITIONER's overcollected taxes that is equal to its $$$$$ of undercollected taxes on sales.

The Division also states that it is not authorized to refund the remaining $$$$$ of overcollected taxes to PETITIONER because PETITIONER's customers, not PETITIONER, "paid" the taxes. The Division argues that the Utah Supreme Court's decision in *Greater Park City Company v. Tax*

Commission, Operations Division, 954 P.2d 873 (Utah 1998) precludes it from refunding the remainder of the overcollected taxes to PETITIONER. In *Greater Park City*, the Court clarified that a seller, such as PETITIONER, who collects taxes from its customers has the status of a "collector" rather than that of a "taxpayer" for refund purposes under Section 59-12-110. The Court confirmed that a seller who overcollects taxes from its customers has no standing to apply for and receive a refund of those taxes after they are remitted to the Tax Commission. Accordingly, except for benefiting from the offset authorized in Rule 4(C), PETITIONER is not entitled to receive a refund of the overcollected taxes at issue in this case.

PETITIONER argues, however, that the ruling in *Greater Park City* has been overturned by the Legislature's enactment of Section 59-12-110.1, which became effective on July 1, 2004. PETITIONER argues that Section 59-12-110.1 gives a seller the right to request a refund on behalf of its customers of taxes that they have overpaid. The Division asserts that Section 59-12-110.1 was enacted to protect sellers from class-action lawsuits by allowing a customer to request a refund not only from the Tax Commission, but also from the seller. The Division points out that while Section 59-12-110.1 allows a purchaser, or customer, to request a refund from the seller, it does not specifically provide that the seller can receive the refund directly from the Commission on the customer's behalf.

Section 59-12-110(2)(b) allows a purchaser to request a refund of overpaid sales tax from the Tax Commission within three years of the overpayment. Section 59-12-110.1 provides a second process for a taxpayer to receive overpaid sales tax, in this instance from the seller. However, Section 59-12-110.1 does not provide that a seller who overcollected sales tax from its customers can automatically receive from the Tax Commission any overcollected taxes paid by its customers. As a result, the ruling in *Greater Park City* remains in effect, and PETITIONER is not authorized under Utah law to automatically receive a refund of all excess sales taxes that it overcollected from its customers.

Motion to Amend Petitioners. Under Section 59-12-110(2)(b), PETITIONER's customers are permitted to apply to the Commission for any taxes that PETITIONER overcollected from them within three years of the overpayment. No evidence was submitted to show that any of PETITIONER's customers applied within the three-year timeframe for a refund of taxes that they overpaid during the April 1, 2003 through December 31, 2004 audit period.

Nevertheless, the Division stated that for many years, it has allowed two alternative, "more efficient" approaches to issue refunds that do not require each customer to submit a separate refund request, specifically involving: 1) the seller setting up a trust account through which its customers are refunded; or 2) the seller first refunding the overcollected amounts to its customers, and upon providing sufficient evidence of the refunds, the Commission reimbursing the seller for the refunds.

At the Formal Hearing, PETITIONER REP. claimed that he had obtained powers of attorney from many of PETITIONER's customers authorizing him to represent them. PETITIONER REP. submitted 11 powers of attorney on February 1, 2010. In the powers of attorney, PETITIONER REP. is authorized to represent certain named taxpayers in matters concerning Utah sales taxes collected by PETITIONER or its predecessor for tax years 2004 through 2008. Given the Commission's prior policy to allow alternative refund methods, it appears that a third alternative is also reasonable under the limited circumstances of this case, specifically to allow a refund of any sales tax overcollected in 2004 from customers who are expressly identified in the powers of attorney that PETITIONER REP. submitted on February 1, 2010.[3] PETITIONER REP., as attorney-in-fact for those taxpayers, has a fiduciary obligation to ensure that those taxpayers actually receive the refunds to which they are entitled.[4]

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3 It is noted that the 11 powers of attorney that PETITIONER REP. received from purported PETITIONER customers do not cover the entire audit period at issue in this appeal. Although the audit period in this appeal runs from April 1, 2003 through December 31, 2004, the powers of attorney are only valid for those transactions that occurred in 2004.

4 We express no opinion as to what form the actual refund should take. Checks could be issued jointly to PETITIONER and the actual taxpayers, directly to the individual taxpayers, or in some other

Given this alternative, there does not appear to be a need to add each of the customers identified in the powers of attorney as petitioners in this matter. Any customer who overpaid sales tax to PETITIONER in 2004 is not a "necessary" party to this appeal pursuant to URCP Rule 19(a). As a result, PETITIONER's customers are not parties who are "indispensable" to this appeal.[5] First, it was determined above that PETITIONER cannot be refunded the amounts that it overcollected from its customers, with the exception of the offset allowed under Rule 4(C). None of PETITIONER's customers need to be added to this appeal in order to determine PETITIONER's tax liability for the audit period.

Second, the Commission is allowing any customer of PETITIONER that is identified in the 11 powers of attorney submitted by PETITIONER REP. to receive a refund of taxes that they overpaid PETITIONER for the 2004 tax year, even though the individual customers did not individually submit timely refund requests pursuant to Section 59-10-110(2)(b). With the availability of this alternative, PETITIONER's customers are not impeded from protecting their interests in this matter and are not "indispensable" to this appeal.

A third reasons also exists to deny PETITIONER REP.'s Motion to Amend Petitioners. No evidence was submitted to show that any of the customers identified in the powers of attorney overpaid sales tax to PETITIONER during the audit period. It is assumed that the Division's Statutory Notice contains a list of PETITIONER's customers and the amounts each of them overpaid. If so, this

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fashion that will effectuate the intent of this order. We leave the procedure to the discretion of the Auditing Division.

5 In *Seftel v. Capital City Bank*, 767 P.2d 941 (Utah Ct. App. 1989), aff'd sub nom. *Landes v. Capital City Bank*, 795 P.2d 1127 (Utah 1990), the Utah Supreme Court determined that a two-part inquiry must be followed in order to determine whether a party is indispensable to a matter under URCP Rule 19. Pursuant to Rule 19(a), a court must first determine whether an absent party has sufficient interest in the action to make it a necessary party, considering the criteria set forth in the rule. If, after the appropriate analysis, a party is deemed "necessary," a court must then proceed to Rule 19(b), and determine whether the party is indispensable, considering the four factors set out in that subsection. *See also Wright v. First Nat'l Bank of Altus, Oklahoma*, 483 F.2d 73, 75 (10th Cir. 1973).

information can be compared to the names of individuals and companies identified in the powers of attorney that PETITIONER REP. submitted to determine whether a refund should be made. However, it would be imprudent to add petitioners to this appeal when the Commission has no evidence to show that the parties PETITIONER REP. proposes to add as petitioners are, in fact, PETITIONER customers who overpaid sales tax to PETITIONER during the audit period.

In conclusion, the Motion to Amend Petitioners is denied. However, the Division is ordered to compare the 11 powers of attorney submitted by PETITIONER REP. to their audit information. If a person or company identified in the powers of attorney is also identified in the audit information as a customer who overpaid sales tax to PETITIONER in 2004, the Division shall refund the amount of the overpayments that occurred in 2004. No overpayments that occurred in the 2003 shall be refunded, as the powers of attorney do not cover any period prior to 2004. In addition, it appears that certain individuals may have signed powers of attorney on behalf of PETITIONER customers that are corporations or other such entities, without identifying the customer for which they were signing. We have no reason to doubt PETITIONER REP.'s representation that Messrs. PERSON A, PERSON C, and PERSON D, signed on behalf of COMPANY H, COMPNY I; , and COMPANY J. If the Division deems it necessary, however, it may take the steps it feels necessary to verify this.

Motion to Compel Denial of 2005 Thru (sic) 2007. The audit period at issue in this appeal is April 1, 2003 through December 31, 2004. The Motion to Compel Denial of 2005 Thru (sic) 2007 and any refund for the 2005, 2006 and 2007 tax years do not relate to the audit period and, as a result, are not at issue in this appeal. As a result, the Motion to Compel Denial of 2005 Thru (sic) 2007 is denied. That being said, however, it appears clear from the available information that the Division has not yet responded to a refund claim for 2005, 2006 and 2007, and is awaiting the results of this hearing. As soon as the order in this case becomes final, we understand that the Division will issue a decision

concerning the refund request for these years. If the Division denies the refund request for these years and the requesting party timely submits a petition asking for reconsideration of the Division's decision, a separate appeal may be opened to hear the issues concerning these years. However, issues concerning refund requests for 2005, 2006 and 2007 are not part of this appeal.

CONCLUSIONS OF LAW

1. Neither Section 59-12-110 nor 59-12-110.1 authorizes PETITIONER to request a refund of taxes that it erroneously collected from its customers and remitted to the Tax Commission. Except for any offset provided for in Rule 4(C), PETITIONER is not entitled to receive a refund of any excess overcollections paid by its customers and remitted by PETITIONER to the Commission. As a result, PETITIONER owes $$$$$ of sales and use taxes, plus interest, on unreported taxable purchases during the audit period, but does not owe any sales and use taxes on underreported taxable sales.

2. The individuals and entities identified in the 11 powers of attorney submitted by PETITIONER REP. are not "necessary" parties and are not "indispensable" to the appeal. In addition, no evidence was submitted to show that the individuals and entities identified in these powers of attorneys were PETITIONER customers who overpaid sales tax to PETITIONER during the audit period. For these reasons, PETITIONER REP.'s Motion to Amend Petitioners is denied.

3. Nevertheless, if an individual or other entity identified in the powers of attorney is also identified in the audit information as a customer who overpaid sales tax to PETITIONER in 2004, the Division shall refund the amount of the overpayments that occurred in 2004.

4. PETITIONER REP. has submitted a refund request concerning overcollections of sales tax that PETITIONER or its predecessor collected from its customers and remitted to the Tax Commission for tax years 2005, 2006 and 2007. The evidence shows that the Division has not issued a decision either granting or denying the request. Because those years are not part of this appeal, the

Commission denies PETITIONER REP.'s Motion to Compel Denial of 2005 Thru (sic) 2007. This denial, however, is without prejudice, and PETITIONER REP. may renew his request if the Division fails to issue a decision concerning the request for these three years in a timely fashion after this order becomes final.

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Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission denies PETITIONER's request to receive a refund for that portion of its overcollected taxes on sales that is in excess of its undercollected taxes on sales. As a result, the Commission finds that PETITIONER's owes the $$$$$ of sales and use taxes, plus interest, that the Division assessed on PETITIONER's unreported taxable purchases during the audit period.

The Division is ordered to refund overpayments that occurred in 2004 to any PETITIONER customer who overpaid sales tax to PETITIONER in 2004 and who is identified in the powers of attorney that PETITIONER REP. submitted to the Commission on February 1, 2010. The Motion to Amend Petitioners, however, is denied.

The Motion to Compel Denial of 2005 Thru (sic) 2007 is denied without prejudice. If the Division fails to issue a decision concerning the refund request that PETITIONER REP. has made concerning PETITIONER's overcollections for tax years 2005, 2006 and 2007 in a timely fashion after this order becomes final, PETITIONER REP. may renew his request to the Commission. It is so ordered.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601et seq. and 63G-4-401 et seq.

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