

08-2006
AUDIT
SIGNED 1-15-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 08-2006

Account No. #####

Tax Type: Audit – Sales Tax

Tax Year: 7/04 – 6/07

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER REP 1, PETITIONER
PETITIONER REP 2, PETITIONER

For Respondent: RESPONDENT REP 1, Assistant Attorney General
RESPONDENT REP 2, Auditing Division
RESPONDENT REP 3, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on January 7, 2009. The Taxpayer requested a waiver of the difference in tax between the 6% and 7.75% tax rate, as well as interest assessed as a result of a sales tax audit. The Taxpayer was assessed \$\$\$\$\$ in additional tax and interest. Taxpayer submitted a payment of \$\$\$\$\$ on December 14, 2007. Interest continues to accrue on the outstanding balance.

APPLICABLE LAW

Sales tax is imposed on certain transactions as set forth in Utah Code Ann. §59-12-103, below in relevant part:

- (1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

- (i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days...

Utah Code Ann. §59-12-103 (2004-2007).

Under Utah Code Ann. §59-12-301, the legislative body of a county may impose a transient room tax on charges for the accommodations and services described in Subsection 59-12-10(1)(i).

The collection of the transient room tax is provided for in Utah Code Ann. §59-12-302, set forth below in pertinent part:

- (1) (a) Except as provided in Subsection (1)(b) or (c), the tax authorized under this part shall be administered, collected, and enforced in accordance with:
 - (i) the same procedures used to administer, collect, and enforce the tax under:
 - (A) Part 1, Tax Collection; or
 - (B) Part 2, Local Sales and Use Tax Act; and
 - (ii) Chapter 1, General Taxation Policies.
- (b) (i) Notwithstanding Section 59-12-206, each county may collect the tax imposed by the county and need not transmit the tax to the commission or contract with the commission to collect the tax.
- (ii) The amount of tax collected shall be reported to the commission as provided in Sections 59-12-211 through 59-12-215.

Utah Code Ann. §59-12-302 (2004-2007).

Under Utah Code Ann. §59-12-352, municipalities may also impose a transient room tax for the Municipalities may also impose a transient room tax on the charges for the accommodations and services described in Subsection 59-12-10(1)(i).

The collection of the transient room tax for municipalities is provided for in Utah Code Ann. §59-12-302, set forth below in pertinent part:

- (1) Except as provided in Subsections (2) and (3), the tax authorized under this part shall be administered, collected, and enforced in accordance with:
 - (a) the same procedures used to administer, collect, and enforce the tax under:
 - (i) Part 1, Tax Collection; or
 - (ii) Part 2, Local Sales and Use Tax Act; and
 - (b) Chapter 1, General Taxation Policies.

- (2) Notwithstanding Section 59-12-206, a municipality imposing a tax under this part:
 - (a) may collect the tax and is not required to:
 - (i) transmit revenues generated by the tax to the commission; or
 - (ii) contract with the commission to collect the tax;
 - (b) shall report the revenues it collects to the commission as provided in Sections 59-12-211 through 59-12-215; and

Utah Code Ann. §59-12-354 (2004-2007).

Rule R865-19S-79 sets forth definitions to be used for the purpose of administering the transient room tax and sales tax, below:

- A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.
 1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.
 2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.
 3. "Trailer" means house trailer, travel trailer, and tent trailer.
 4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

Utah Admin. Code R865-19S-79 (2004-2007).

The Commission has issued further guidance with regard to the collection of transient room tax, as set forth in Rule R865-19S-96, below:

- A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).
- B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.
- C. The transient room tax is not subject to sales tax.

Utah Admin. Code R865-19S-96 (2004-2007).

Section 59-1-402(5) of the Utah Code provides, “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.” Utah Code Ann. §59-1-402(5) (2004-2007).

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401 of the Utah Code provides, “Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.” Utah Code Ann. §59-1-401(11) (2004-2006) and §59-1-401(13) (2007).

DISCUSSION

Taxpayer is requesting a waiver of the difference in tax between a 6% and 7.75% tax rate, as well as the interest assessed as a part of a sales tax audit. In October of 2007, Taxpayer received a letter indicating that the Auditing Division was conducting a self-review project on vacation rental properties. Included with the letter were examples and instructions on how to complete the self-review. The letter noted that all self-reviews were subject to audit, but that tax that was self-reported as a part of the review would be subject to interest, but not penalties, and that the review period would be limited to three years.

For the Taxpayer, PETITIONER REP 2 stated that she received the correspondence from the Tax Commission, she called the Auditing Division with several questions. She testified that her records show sixteen phone calls to the Division since October of 2007. PETITIONER REP 2 stated that she first spoke with TAX COMMISSION EMPLOYEE 1, and told her the address of the property, and inquired as to the tax rate. PETITIONER REP 2 stated that TAX COMMISSION EMPLOYEE 1 told her that the tax rate was 6%, and to select COUNTY from the drop-down menu for online filing. PETITIONER REP 2 testified that she also spoke with TAX COMMISSION EMPLOYEE 2, who again told her to select COUNTY from the drop-down menu, and that the tax rate would be 6%. Taxpayers submitted a filing as a part of the self-review, using the 6% tax rate, and sent in a payment of \$\$\$\$\$.

Taxpayer provided copies of its December 1997 “Report of Gross Sales of Overnight Accomodations” to CITY, as well as a table effective January 1, 1998 regarding the tax rates within the CITY limits. PETITIONER REP 1 testified that when they acquired the property, he went to COUNTY, and was told that the state would contact them. PETITIONER REP 2 testified that she did not know how to file with the state because she had not received any information from them. Both PETITIONER REP 1 and PETITIONER REP 2 testified that they had not

received any correspondence from the Tax Commission until October of 2007, though they opened their business in October of 1997.

Taxpayer's representative argued that there was an error on the part of the state in failing to properly communicate the tax rates and information on how to file. PETITIONER REP 2 stated that the fact the Division had businesses conduct a "self-review" indicates there was a problem. Taxpayer's representative asked the Commission to waive the difference between the 6% interest rate and the 7.75% interest rate, as well as waive the interest.

The Division's representative stated the Taxpayer has been in operation since 1997, and has apparently not properly filed sales and transient room tax returns from that time through the audit period. She noted that the Division did not assess any penalties, and only went back to 2004 as a part of the audit. The Division's representative argued that even if the Division had provided the Taxpayer with incorrect information on the tax rate, the tax should still be calculated at the 7.75% rate, not 6%. She stated that the Division's telephone log shows that Taxpayer called in a number of times. However, it is the Division's position that the Taxpayer has the responsibility to be aware of the tax laws and filing requirements. Finally, the Division's representative stated that the interest should not be waived because the information provided by the Division is dependent on the question asked by taxpayers, and the Division's telephone log does not indicate the Taxpayer stated that the business was in CITY.

The Commission is granted the discretion to waive penalties and interest under Utah Code Ann. §59-1-401. In addition, the Commission has issued Publication 17 explaining the circumstances it considers to be "reasonable cause" for the waiver of penalties and interest. With regard to a waiver of interest, Publication 17 provides, "[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the Tax Commission gave you erroneous information or took inappropriate action that contributed to the error." Taxpayer made multiple efforts to contact the Division and ask questions regarding the filing of the sales and transient room tax return for the self-review. The Division's records indicate that the Taxpayer did call in several times. The Taxpayer was told by a Commission employee to file the return using COUNTY and a tax rate of 6%, rather than CITY and a tax rate of 7.75%. The Commission finds that a Commission employee did provide the Taxpayer with erroneous information that resulted in an underpayment of tax, and interest being assessed.

Taxpayer requested a waiver of the tax liability difference between the 6% rate used by the Taxpayer to report its sales and transient room tax and the 7.75% rate determined to be correct by the Division on its audit of the Taxpayer's self-reporting. Taxpayer argued that there should be a waiver because a representative from the Division told them the tax rate was 6%. However,

Appeal No. 08-2006

Taxpayer did not argue, nor present any information, that would indicate that 6% was the correct tax rate. The Taxpayer is located within the CITY limits, where the tax rate is higher than other areas in COUNTY. The Commission finds that Taxpayer's sales and transient room tax should be calculated using the 7.75% tax rate, and sustains the tax deficiency of the audit.

DECISION AND ORDER

Based on the foregoing, the Commission finds that sufficient cause has been shown to justify a waiver of the interest assessed as a result of the sales tax audit; however, the Commission sustains the tax deficiency. 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

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

DATED this _____ day of _____, 2009.

Jan Marshall
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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.