

09-0903
SALES- USE TAX FILING CHARGE
07-13-2009

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 09-0903 Account No. ##### Case Type: Filing Status – Sale and Use Tax Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP, Owner
For Respondent: RESPONDENT REP, 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 June 29, 2009.

On February 20, 2009, Taxpayer Services Division (the “Division”) issued a Sale and Use Tax Filing Change (“Notice”) to PETITIONER. (“Petitioner” or “taxpayer”), in which it informed the taxpayer that it must now file on a quarterly basis because its sales and use tax liability for the 2008 calendar year was between \$\$\$\$\$ and \$\$\$\$\$.

The taxpayer has appealed the Division’s action. The taxpayer states that its sales and use tax liability in excess of \$\$\$\$\$ for the 2008 calendar year was an anomaly. The taxpayer explains that it performed a one-time “service project” for the community that resulted in it using its sales tax number to report a number of “(X)” sales made by another party. These sales resulted in the taxpayer reporting sales tax between \$\$\$\$\$ and \$\$\$\$\$ for the 2008 calendar year. The taxpayer states that it had not incurred \$\$\$\$\$ in

sales tax liability for any year prior to 2008 and that it does not anticipate incurring this amount of liability for 2009. In fact, the taxpayer has filed a return for the first quarter of 2009 that shows \$0.00 of tax liability. The taxpayer admits that it could file on a quarterly basis, but wants to avoid the additional paperwork. For these reasons, the taxpayer asks the Commission to allow it to file an annual return for all of 2009 instead of filing quarterly returns for the remainder of 2009.

The Division states that an annual filer's filing status is changed to a quarterly basis if the annual filer reports more than \$\$\$\$ on its annual sales and use tax return. Utah Admin. Rule R865-19S-12(4)(c) ("Rule 12"). The Division also states that it will immediately change the filing status back to an annual basis if the taxpayer informs it that the tax liability in excess of \$\$\$\$ was an anomaly unlikely to occur again. Had the taxpayer not already filed on a quarterly basis for the first quarter of 2009, the Division states that it would change the taxpayer back to an annual basis for 2009. However, because the taxpayer has already filed a quarterly return in 2009, the Division states that it cannot change the taxpayer back to an annual basis without "glitches" occurring in its system. For these reasons, the Division asks the Commission to sustain its action changing the taxpayer to a quarterly filer for 2009. The Division states that it will change the taxpayer back to an annual filer for the 2010 tax year if its quarterly returns for 2009 show an aggregate tax liability of less than \$\$\$\$ and the taxpayer requests such a change.

APPLICABLE LAW

Utah Admin. Rule R865-19S-12 allows the filing of an annual return instead of a quarterly return, as follows in pertinent part:

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- (4) Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:
 - (a) New businesses that expect annual sales and use tax liability less than \$1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

(b) (i) Businesses currently assigned a quarterly filing status, in good standing and reporting less than \$1,000 in tax for the preceding calendar year may be changed to annual filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

(c) (i) Businesses assigned an annual filing status reporting in excess of \$1,000 for a calendar year, will be changed to quarterly filing status.

(ii) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

(5) Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of \$1,000 or as a result of delinquent payment history.

DISCUSSION

The Division states that it should not have offered the taxpayer any appeal rights concerning the change of filing status. It states that the Notice it sent to the taxpayer erroneously included appeal rights and that it has since “corrected” the notice letter to exclude appeal rights. The Division also states that should the Commission grant the taxpayer’s request, it will find a way to avoid any “glitch” the decision might cause in its computer systems.

The Commission finds that the taxpayer’s filing status should be changed back to an annual basis for the 2009 tax year. First, the tax liability in excess of \$\$\$\$ that occurred in 2008 is an anomaly. The Division did not argue otherwise. Second, the Division frequently changes a filing status that has been changed to a quarterly basis back to an annual basis, if the taxpayer can show that the sales tax in excess of \$\$\$\$ is an anomaly and the taxpayer contacts the Division prior to filing a quarterly return. Third, on March 3, 2009, the taxpayer filed a petition explaining that the 2008 tax liability was an anomaly and asked for its filing status to be changed back to an annual basis. Fourth, the Division was made aware of the taxpayer’s request no later than March 24, 2009, when it received a Notice of Initial Hearing. Fifth, these two events in March occurred prior to the taxpayer filing its first quarter 2009 return in April 2009. For these reasons, the

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Commission grants the taxpayer's appeal. The taxpayer may file an annual return for the 2009 calendar tax year.

DECISION AND ORDER

Based upon the foregoing, the Commission grants the taxpayer's appeal. The taxpayer may file an annual sales and use tax return for the 2009 calendar tax year. The taxpayer is not required to file any additional quarterly returns for 2009. 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.

Kerry R. Chapman
Administrative Law Judge

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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

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