

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

v.

AUDITING DIVISION OF THE UTAH STATE  
TAX COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 09-2630

Account No. #####

Tax Type: Cigarette Tax & Sales and Use Tax

Tax Years: 10/06 – 6/07

Judge: Marshall

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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *Pro Se*

For Respondent: RESONDENT REP. 1, Assistant Attorney General  
RESONDENT REP. 2, Auditing 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 November 24, 2009. At issue is the audit deficiency of cigarette and sales and use tax to the Petitioner, as imposed by Auditing Division (“Division”) in a Statutory Notice dated July 28, 2009. The amount of the deficiency was \$\$\$\$ in cigarette tax, \$\$\$\$ in sales and use tax and \$\$\$\$ in interest for a total of \$\$\$\$ as of the date of the notice. Interest continues to accrue on the unpaid balance.

APPLICABLE LAW

A tax is imposed on the sale, use, storage, or distribution of cigarettes in Utah under Utah Code Ann. §59-14-204 as follows:

- (1) Except for cigarettes described under Subsection 59-14-210(3), there is levied a tax upon the sale, use, storage, or distribution of cigarettes in the state.
- (2) The rates of the tax levied under Subsection (1) are:
  - (a) 3.475 cents on each cigarette, for all cigarettes weighing not more than three pounds per thousand cigarettes; and
  - (b) 4.075 cents on each cigarette, for all cigarettes weighing in excess of three pounds per thousand cigarettes.

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- (3) The tax levied under Subsection (1) shall be paid by any person who is the manufacturer, jobber, distributor, wholesaler, retailer, user, or consumer.

Utah Code Ann. §59-14-204 (2006-2007).

The assessment of the cigarette tax is further explained in Rule R865-20T-1, as follows:

- A. The cigarette tax is a tax on the first purchase, use, storage, or consumption of cigarettes by a manufacturer, jobber, wholesaler, distributor, retailer, user, or consumer within the state.
- B. If cigarettes are purchased outside the state for use, storage, or consumption within the state, the tax must be paid by the user, storer, or consumer.

Utah Admin. Code R865-20T-1 (2006-2007).

The methods for paying the tax on cigarettes are set forth in Rule R865-20T-2, set forth below in pertinent part:

- A. If the tax is due as a result of use, storage, or consumption of imported cigarettes, the tax may be paid by affixing stamps or by filing a return prescribed by the Tax Commission.
  1. This return must be filed and the tax must be paid within 15 days from the date of use, storage, or consumption unless application is made to the Tax Commission for permission to file returns and pay the tax on a monthly basis.

Utah Admin. Code R865-20T-2 (2006-2007).

Sales tax is imposed on certain transactions under Utah Code Ann. §59-12-103, as follows 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:
  - (a) retails sales of tangible personal property made within the state...

Utah Code Ann. §59-12-103 (2006-2007).

Individuals are required to pay a use tax under certain circumstances, as set forth in Utah Code Ann. §59-12-107(1), below in relevant part:

- (c) A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if:
  - (i) the seller did not collect a tax imposed by this chapter on the transaction; and
  - (ii) the person:
    - (A) stores the tangible personal property in the state;

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- (B) uses the tangible personal property in the state; or
- (C) consumes the tangible personal property in the state.

Utah Code Ann. §59-12-107 (2006-2007).

Methods for payment of the use tax are set forth in Rule R865-21U-6 as follows, in pertinent part:

- A. Purchasers of tangible personal property – the storage, use, or other consumption of which is subject to tax – must account for the tax liability by paying the tax...
  - 2. directly to the Tax Commission if the retailer from whom the property was purchased does not hold a certificate of registration. Under these circumstances, one of the following procedures must be followed:
    - (b) if the purchases are made by any person as defined in Utah Code Ann. Section 59-12-102, who has no sales tax collection responsibility, and if the annual taxes due may be reasonably expected to exceed \$400, such person must apply for registration as a consumer and pay the tax using a quarterly use tax return; or
    - (c) if the purchases are made by an individual who has no sales tax collection responsibility and the annual use tax liability is less than \$400, the tax is remitted using the individual income tax return filed each year. The tax is computed by using the rates provided in the income tax instructions for the address of the consumer as shown on the individual income tax form...

Utah Admin. Rule R865-21U-6 (2006-2007).

Utah Code Ann. §59-10-539 provides for the imposition of interest, which in pertinent part states as follows:

- (8) In addition to the penalties added by this section, there shall be added to the tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments...

Utah Code Ann. §59-10-539 (2006-2007).

“Interest 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) (2006-2007).

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Utah Code Ann. §59-1-401 grants the Commission discretion to waive penalties and interest, as follows:

- (13) 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(13) (2009).

#### DISCUSSION

Taxpayer acknowledges that she and her husband purchased the cigarettes for their consumption. She stated that she understands the imposition of the cigarette tax, but does not know why sales tax was assessed, as they did not sell the cigarettes, they were the consumers. Taxpayer further stated that she believes the amount of tax due is excessive.

The Division's representative argued that Utah Code Ann. §59-14-204 imposes a Utah cigarette tax on the sale, use, storage, or distribution of cigarettes in the state. He stated that there is no dispute that the Taxpayers ordered the cigarettes online and consumed them. The Division's representative stated that under Utah Code Ann. §59-12-107 sales or use tax is imposed on tangible personal property that is stored, used, or consumed in Utah. The Division provided copies of invoices that match the transactions identified in the audit report.

Utah Code Ann. §59-14-204 is clear that there is a tax on cigarettes sold, used, stored, or distributed in the State of Utah, and further that the tax can be levied against the consumer. Additionally, Utah Code Ann. §59-12-107 imposes a use tax where the seller did not collect sales tax and the consumer stores, uses, or consumes the property in the State of Utah. There is no dispute that Taxpayer used and consumed the cigarettes in the State of Utah. There is nothing to show that the seller charged Taxpayer sales tax. Thus tax was properly assessed under Utah Code Ann. §59-14-204 and §59-12-107. Administrative Rule R861-1A-42 and Publication 17, issued by the Tax Commission, outline the circumstances the Commission may consider as "reasonable cause" justifying a waiver of penalties and interest. There were no penalties assessed by the Division in this matter. To be granted a waiver of interest, the Taxpayer must show that a Tax Commission employee gave the Taxpayer erroneous information or took inappropriate action that contributed to the error. The Taxpayer has not shown that there was a Tax Commission error, or that a Tax Commission employee provided her with erroneous information.

Taxpayer has indicated that the tax amounts are excessive. Taxpayer can contact the Taxpayer Services Division to set up a payment plan, or to inquire about the "Offer in Compromise" program. The Commission has established the "Offer in Compromise" program to assist taxpayers who are

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experiencing financial hardship and do not have the ability to pay any portion of unpaid tax, penalty, or interest. Taxpayer can contact the Taxpayer Services Division directly at (801) 297-7703.

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Jan Marshall  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's assessment of tax and interest on the audit of cigarette, and sales and use tax. 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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

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