

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 09-3344</p> <p>Account No. #####</p> <p>Tax Type: Audit – Sales Tax</p> <p>Tax Year: 2007</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER, *Pro Se*
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 March 11, 2010. The Taxpayer disputes the assessment of sales tax and interest on the purchase of (ITEMS) in CITY 1. As of November 13, 2010, Taxpayer was assessed \$\$\$\$ in tax, and interest in the amount of \$\$\$\$\$. Interest continues to accrue on the unpaid 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:
 - (l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:
 - (i) stored;
 - (ii) used; or
 - (iii) otherwise consumed...

The Commission has promulgated Administrative Rule R865-21U-16 to provide additional guidance on property sold or used in interstate commerce, set forth below in pertinent part:

The fact that tangible personal property is purchased in interstate or foreign commerce does not exempt the property from the tax if the property is stored, used, or otherwise consumed within this state after the shipment in interstate or foreign commerce has ended.

Utah Code Ann. §59-1-402(5) 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.”

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(13) 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.”

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

- (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

DISCUSSION

The Petition for Redetermination submitted by the Taxpayer requested a waiver of the interest assessed on the audit. However, at the hearing, the Taxpayer asked for relief from both the tax liability and the interest.

Taxpayer purchased (ITEMS) in CITY 1, because she was told she would get a special price. She testified that she was told she did not have to pay the tax, and that the company would take the tax out of the commission that would be paid to the travel agent. She stated that when they arrived, some of the (X) was broken. The Taxpayer believes that she is a victim, and that she had relied on the company’s assurance that she would not have to pay additional tax.

The Taxpayer stated that she does not have the ability to pay the tax liability. She explained that she has had financial difficulties since her divorce. Taxpayer testified that she is using her credit card to make her mortgage payment, and that she only made \$\$\$\$ last year. She stated that had she known that she would have to pay additional tax, she would not have purchased the chandeliers.

For the Division, EMPLOYEE 1 explained that on a quarterly basis the Division receives information from customs, but that the audits are done on an annual basis. He stated that in 2009, the Division audited purchases made in 2007 and 2008. The Division received information that the Taxpayer had imported (ITEMS), and sent a summary notice to the Taxpayer in August of 2009. The Taxpayer responded to the summary notice, and in October 2009, the Division issued its Statutory Notice.

The Division's representative stated that under Utah Code Ann. §59-12-103, goods that are sold or used in the state are subject to tax. It is the Division's position that the tax and interest were properly assessed. The Division's representative stated that because the information the Taxpayer relied on was not provided by a Tax Commission employee, there is not reasonable cause to waive the interest. He sympathized with the Taxpayer's situation and informed her that she can request an offer in compromise through the Taxpayer Services Division.

The Division properly assessed the Taxpayer tax on the purchase of the chandeliers pursuant to Utah Code Ann. §59-12-103(1). Interest was assessed pursuant to Utah Code Ann. §59-1-402(5). The Commission has discretion to waive interest under Utah Code Ann. §59-1-401(13). The Commission has promulgated Administrative Rule R861-1A-42, which provides the following in regard to a request for a waiver of interest, "[t]o be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error." As pointed out by the Division, the information the Taxpayer relied on was provided to her by an employee of the company that sold her the chandeliers, not the Tax Commission. The Taxpayer has not shown reasonable cause for a waiver of the interest.

The Taxpayer is asking for relief on the basis of financial hardship. The Commission generally does not consider hardship as grounds for a waiver of tax, penalties, or interest through the appeal process. However, the Commission has established the "Offer in Compromise" program in the event that a taxpayer is experiencing financial hardship and does not have the ability to pay any unpaid portion of tax, penalty, or interest. The Commission does not know whether Taxpayer qualifies for the Offer in Compromise program, she would need to contact the Taxpayer Services Division directly at (801) 297-7703.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the purchase of the chandeliers by Taxpayer in 2007 was not exempt from taxation, and is subject to sales tax. Therefore, the Commission sustains the Division's audit. 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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
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.

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