

14-1325

TAX TYPE: TOBACCO

TAX YEAR: 2012 AND 2013

DATE SIGNED: 1-21-2015

COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN, R. PERO

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,

Petitioner,

vs.

TAXPAYER SERVICES DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 14-1325

Account No. #####

Tax Type: Tobacco

Tax Year: 2012 and 2013

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative

For Respondent: RESPONDENT-1, Taxpayer Services Division

RESPONDENT-2, Taxpayer Services Division

RESPONDENT-3, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 23, 2014 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Taxpayer is requesting a waiver of the following penalties:

Period	Tax Type	Penalty Type	Penalty Amount
April 2012	Tobacco Stamp	Late Payment	\$\$\$\$
June 2012	Tobacco Tax	Late Filing	\$\$\$\$
		Late Payment	\$\$\$\$
	Tobacco Stamp	Late Payment	\$\$\$\$
September 2012	Tobacco Stamp	Late Payment	\$\$\$\$
December 2012	Tobacco Tax	Late Filing	\$\$\$\$
		Late Payment	\$\$\$\$
	Tobacco Stamp	Late Payment	\$\$\$\$
March 2013	Tobacco Tax	Late Filing	\$\$\$\$
		Late Payment	\$\$\$\$
	Tobacco Stamp	Late Payment	\$\$\$\$
June 2013	Tobacco Tax	Late Filing	\$\$\$\$
		Late Payment	\$\$\$\$

	Tobacco Stamp	Late Payment	\$\$\$\$\$
September 2013	Tobacco Tax	Late Filing	\$\$\$\$\$
		Late Payment	\$\$\$\$\$
October 2013	Tobacco Tax	Late Payment	\$\$\$\$\$

As of the hearing date, the penalties totaled \$\$\$\$\$, and all balances had been paid.

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

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.

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:
 - (l) amounts paid or charged for tangible personal property if within this state
 - the tangible personal property is:
 - (i) stored;
 - (ii) used; or
 - (iii) consumed

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:

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

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

The Taxpayer’s representative stated that they have been in business since 1975, and had not been out of compliance until 2011. He explained that there was a tax increase in July of 2010 from \$\$\$\$ to \$\$\$\$ per ounce. He stated that they had failed to increase their (X) line to account for the increase. Their bookkeeper figured out the problem in April 2012, and they immediately corrected it. He explained that they knew their costs were way off, and the bookkeeper broke out every product to find the error.

The Taxpayer’s representative stated he was unaware that he could file and pay the periods as they came due, and work on the prior periods until NAME recently explained that to him. He stated that they had been told that after so many days the cigarette stamp tax amount due would go to their bond, and they were trying to avoid that.

The Division’s representative stated that when they received the Taxpayer’s refund request, she spoke with NAME. She proffered that NAME indicated that the Taxpayer’s returns were not being filed timely, and would get to the point of action being taken on the return before the Taxpayer would file. She noted also that the Taxpayer was aware of the increase in tax, but a mistake was made by the Taxpayer in their price increase on the product.

The Division’s representative explained that the tobacco tax return is due quarterly, and the stamps are due as they are requested. She stated that a request for stamps is made, and the Taxpayer has 60 days to pay, if they are getting up to 90% of their bond amount. She noted that the Taxpayer has not purchased stamps in a year. The Division’s representative stated that there were prior penalties on the tobacco tax filing, and continued to be errors on the tobacco tax filing after the periods at issue. She stated that the Division did not find reasonable cause to waive the penalties, and noted that because of the dollar amount involved, the issue was presented to the Commission with a recommendation to deny, and the Commission made the determination to deny the request.

The Commission has promulgated Administrative Rule R861-1A-42 and Publication 17 to outline the circumstances the Commission may consider “reasonable cause” justifying a waiver of penalties. The Taxpayer has not set forth any of the circumstances that are considered to be reasonable cause. The error was caused by an error on the part of the Taxpayer. The Taxpayer had previous errors on the filing of their tobacco tax returns. However, there was no indication

that they had had prior errors in the payment of the tobacco stamp tax. The tobacco stamp tax late payment penalty assessed for the April 2012 period should be waived as a first-time error.

Jan Marshall, Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission waives the penalty assessed on the tobacco stamp tax for the April 2012 period, and denies the Taxpayer's request for a waiver of penalties for the remaining periods.

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 _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.