

08-0073

SALES AND USE

TAX YEAR: 2004, 2005, 2006, & 2007

SIGNED: 03-05-2009

COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>
Petitioner,	
v.	Appeal No. 08-0073
AUDITING DIVISION OF THE	Account No. #####
UTAH STATE TAX COMMISSION,	Tax Type: Sales and Use Tax
Respondent.	Audit Period: 06/01/04 – 04/30/07
	Judge: Chapman

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**Presiding:**

R. Bruce Johnson, Commissioner

Kerry Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REP., from PETITIONER

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 2, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is sales and use tax.
2. The audit period is June 1, 2004 through April 30, 2007.
3. On December 31, 2007, Auditing Division (“Division”) issued a Statutory Notice – Sales and Use Tax (“Statutory Notice”) to PETITIONER (“PETITIONER”). In the Statutory Notice, the

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Division imposed \$\$\$\$ in additional sales and use tax, plus interest of \$\$\$\$ (computed to January 30, 2008), for a total assessment of \$\$\$\$.

4. PETITIONER is contesting that portion of the assessment that imposes tax on its purchases of plastic gift card stock (“card stock”). PETITIONER purchased the card stock tax-free. For the audit period, the Division determined that PETITIONER owes use tax on \$\$\$\$ of purchases of card stock, as shown on Schedule 6 of the Statutory Notice.

5. PETITIONER uses the card stock at issue to produce gift cards that it subsequently sells to its customers. Before the gift cards are sold, PETITIONER embeds the card stock with an electronic code that contains a dollar value entitling the purchaser to use the gift card as tender on future purchases.

6. PETITIONER argues that it is entitled to purchase the card stock tax-free under the resale exemption provided in Utah Code Ann. §59-12-104(25). The Division argues that the resale exemption does not apply because PETITIONER consumes the card stock it uses to produce the gift cards.

7. The parties agree that sales tax is not due when PETITIONER sells a gift card to a customer for the dollar amount embedded on it. PETITIONER collects sales tax from a purchaser on the merchandise purchased with the gift card.

#### APPLICABLE LAW

1. Utah Code Ann. §59-12-103(1)(a) imposes a sales and use tax on the purchaser for amounts paid or charged for “retail sales of tangible personal property made within the state[.]”

2. UCA §59-12-104(25) provides an exemption from sales and use tax for “property purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product[.]”

DISCUSSION

At issue is whether PETITIONER consumes the card stock it purchases to produce the gift cards that it sells to its customers. PETITIONER points out that the Commission has often taken the position that the sale of multiple items combined and sold together are considered to be a single sale. As a result, PETITIONER argues that the card stock it purchases should be considered an item that is “resold” when PETITIONER sells the gift cards produced from the card stock. The Commission disagrees.

The Commission considered a similar situation in *USTC Private Letter Ruling 98-009* (January 6, 1998) (“*PLR 98-009*”). In that case, the Commission considered whether the resale exemption applied to tickets that were printed and sold to a company and that the company subsequently sold to customers to attend a sporting event. The Commission determined that the company consumed the tickets and owed tax on the purchase price it paid the printer for them. The Commission found that the resale exemption did not apply because the company was selling:

the right for the ticket holder to attend a sporting or entertainment event. The ticket itself is incidental to this transaction and is used by the Utah companies only to confirm that their customer has paid for the right to attend the event. The ultimate consumer is paying five or tens dollars, sometimes much more, to buy the right to see the event, not to buy a ticket for which the Utah company paid only a few cents. Consequently, the Utah companies are the ultimate consumer of the tickets you print, and sale tax should be collected on your ticket sales to them.

In the present appeal, PETITIONER is purchasing card stock that costs approximately 20 cents for each gift card. PETITIONER uses the card stock to produce gift cards that are sold to customers at much higher prices. The Commission believes that a customer buying a gift card is not paying \$\$\$\$\$, \$\$\$\$\$ or \$\$\$\$\$ for the card itself, but for the right to purchase merchandise in the amount embedded on the card. The card itself is incidental to the transaction to obtain the right to purchase a certain amount of merchandise. Indeed, PETITIONER acknowledged at the hearing that the card represents an intangible right to make a future purchase. PETITIONER also acknowledged that the card, if lost, could be replaced at no additional

cost. As a result, the Commission believes that its ruling in *PLR 98-009* is controlling and that PETITIONER is the ultimate consumer of the card stock at issue. Accordingly, the resale exemption does not apply on PETITIONER's purchase of the card stock. PETITIONER further argues that *PLR 98-009* is distinguishable because the gift cards can be "reloaded," that is, customers can pay to have additional amounts added to an existing card. We fail to see that this makes a difference. The card is still simply evidence of an intangible right. Because PETITIONER did not pay sales tax on its purchase of the card stock, the Commission sustains the Division's imposition of use tax on the transactions.

#### CONCLUSIONS OF LAW

1. The card stock at issue is tangible personal property that is subject to taxation under Section 59-12-103(1)(a).
2. PETITIONER is the ultimate consumer of the card stock that it purchases to produce the gift cards that it subsequently sells to its customers.
3. PETITIONER's purchases of card stock do not qualify for the resale exemption under Section 59-12-104(25).
4. Because PETITIONER did not pay sales tax on its purchases of card stock, it owes use tax on its purchases of card stock.

#### DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division imposition of use tax on PETITIONER's purchases of card stock. PETITIONER's appeal is denied. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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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

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 et seq. and 63G-4-401 et seq.

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