

APPEAL # 25-1449
TAX TYPE: PENALTY/INTEREST
TAX YEAR: 2025
DATE SIGNED: 03/03/2026
COMMISSIONERS: J. VALENTINE, R. ROCKWELL AND J. DEEDS
EXCUSED: J. FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p>Petitioner,</p> <p>v.</p> <p>CERTIFIED RATES AND MISCELLANEOUS TAXES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 25-1449</p> <p>Account No: #####</p> <p>Tax Type: Penalty/Interest</p> <p>Tax Period: 06/09/25 - 06/09/25</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, *Pro Se*

For Respondent: RESPONDENT'S REP-1, Assistant Attorney General
RESPONDENT'S REP-2, Cigarette Tax and Enforcement Unit
RESPONDENT'S REP-3, Cigarette Tax and Enforcement Unit
RESPONDENT'S REP-4, Cigarette Tax and Enforcement Unit

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 19, 2025 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. The Petitioner timely appealed penalties totaling \$\$\$\$\$, imposed by the Respondent ("Division") after the Division performed a cigarette stamp inspection at the Petitioner's retail store. The Division found ##### loose cigarettes offered for sale. The Division's Utah Cigarette Inspection Report, which imposed the penalties, was issued on MONTH DATE, 2025.

APPLICABLE LAW

The following definitions, set forth in Utah Code Ann. §59-14-102, are relevant to these proceedings:

- (11) “Retailer” means a person that:
 - (a) sells or distributes cigarettes to a consumer in the state; or
 - (b) intends to sell or distribute a cigarette to a consumer in the state.
- (12) “Stamp” means the indicia required to be placed on a cigarette package that evidences payment of the tax on cigarettes required by Section 59-14-205.

A license is required under Utah Code Ann. §59-14-201 to sell cigarettes, as follows, in pertinent part:

- (1) It is unlawful for any person in this state to manufacture, import, distribute, barter, sell, exchange, or offer cigarettes for sale without first having obtained a license issued by the commission under Section 59-14-202.

Utah law imposes a tax and requires a stamp on cigarettes before they can be sold within the state under Utah Code Ann. §59-14-205, as follows, in pertinent part:

- (1) In the case of manufacturers, jobbers, importers, distributors, wholesalers, and retailers, the taxes imposed on cigarettes by this chapter shall be paid by affixing stamps in the manner and at the time prescribed in this section.
- (2) All manufacturers, importers, distributors, wholesalers, and retailers shall securely affix the stamps to each individual package or container of cigarettes sold in the state; and may not sell or provide cigarette stamps to any other person.
- (3) (a) Stamps shall be securely affixed to each individual package of cigarettes within 72 hours after the cigarettes are received within the state.
 - (b) All cigarettes shall be stamped before sale within the state.
 - (c) Cigarettes manufactured within the state shall be stamped by the manufacturer when and as sold.
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- (8) (a) Any person failing to properly affix and cancel stamps to the cigarettes, under this section and rules promulgated by the commission, may be required by the commission to pay as part of the tax, and in addition to any other penalty provided in this chapter, a penalty of \$25 for each offense, to be assessed and collected by the commission in accordance with Chapter 1, Part 14, Assessment, Collections, and Refunds Act.
 - (b) Each article, package or container found not having proper stamps affixed to the article, package, or container is a separate offense.
 - (c) The presence of any package or container in a place of business conducting retail sales shall be prima facie evidence that it is intended for sale and subject to taxes under this chapter.

Utah Code Ann. §59-14-207.5 provides that a retailer may only obtain cigarettes from a properly licensed person, as follows:

- (1) A manufacturer or importer may sell or distribute cigarettes to a licensee if that person is located or doing business in the state, including on any tribal lands located in the state.

- (2) An importer may obtain cigarettes only from a licensed manufacturer.
- (3) (a) A distributor may obtain cigarettes only from a licensed manufacturer, importer, or distributor.
 - (b) A distributor may sell or distribute cigarettes to a person who is a licensed distributor or retailer, if that person is located or doing business in the state, including on any tribal lands in the state.
- (a) A retailer may obtain cigarettes only from a properly licensed person.

Utah Code Ann. §59-14-208(2) makes it a misdemeanor to refuse inspection for the cigarette tax stamp, as set forth below:

- (2) A person is guilty of a class B misdemeanor who:
 - (a) engages in or permits any practice which is prohibited by law and makes it difficult to enforce the provisions of this chapter by inspection;
 - (b) refuses to allow full inspection of his premises by any peace officer or of any agent of the commission upon demand; or
 - (c) hinders or in any way delays or prevents inspection when the demand is made.

Utah Code Ann. §59-14-213 requires that the Commission seize and destroy cigarettes found in violation of these provisions, as follows in relevant part:

- (1) Any cigarettes in violation of the requirements of this chapter or of any state or federal law, including Sections 59-14-203, 59-14-205, 59-14-209, 59-14-211, Subsection 59-14-212(1), or Section 59-14-214 are contraband goods and may be seized without a warrant by the commission, its employees, or any peace officer of the state or its political subdivisions.
- (2) Any goods seized pursuant to Subsection (1) shall be delivered to the commission and destroyed.

The Cigarette and Tobacco Tax and Licensing Act (“Act”) provides that the Commission may waive, reduce or compromise specified penalties imposed under the Act, in accordance with Utah Code Ann. §59-14-103, below:

- The commission may, upon making a record of its actions, and upon reasonable cause shown, waive, reduce, or compromise any of the penalties or interest imposed under:
- (a) Subsection 59-14-212(4)(b)(ii);
 - (b) Subsection 59-14-214(5)(b)(ii);
 - (c) Subsection 59-14-407(5)(b)(ii);
 - (d) Subsection 59-14-606(7)(b)(ii); or
 - (e) Subsection 59-14-608(1)(d).

DISCUSSION

Petitioner is a licensed retailer of cigarettes and operates the COMPANY-1 in CITY-1, Utah. Under this license, the Petitioner is prohibited from selling an individual package or container that contains less than ##### cigarettes. On or about MONTH DATE, 2025, two employees of the Division performed an inspection at the Petitioner’s place of business. The Division employees discovered ##### loose cigarettes being offered for sale. The Division provided photographs of the loose cigarettes. The

Division employees prepared a Form TC-80, Cigarette Tax Stamp Inspection, identifying the brand of cigarettes, and number of each, for the loose cigarettes. The Form TC-80 was signed by both employees of the Division as well as the cashier who was on duty at the Petitioner's place of business. The Division employees seized the loose cigarettes, and the Division then assessed a penalty of \$\$\$\$ for each cigarette, totaling \$\$\$\$.

The Petitioner's representative stated that he and his partner had purchased the business in MONTH of YEAR. He stated that the loose cigarettes were part of the inventory in the back of the store at the time the business was purchased. The Petitioner's representative stated that they believed it was legal to sell the loose cigarettes. Upon questioning from the Division, the Petitioner acknowledged that the loose cigarettes were being offered for sale as single cigarettes.

The Petitioner's representative stated that this is the first time he and his partner have engaged in this type of business and the first time they had been assessed such a penalty. He stated that the Petitioner cannot afford to pay the penalties and asked for a waiver of the penalties.

The Division's representative stated that under Utah Code Ann. §59-14-202, a licensed retailer cannot sell "an individual package or container that contains less than 20 cigarettes..." The Division's representative stated that the Petitioner's representative has acknowledged the Petitioner was selling individual loose cigarettes. He stated further that under Utah Code Ann. §59-14-205(7), a retailer may not "remove, conceal, or obscure a cigarette package" notice or warning label. The Division's representative stated that the packaging, notices and warning labels had been removed from the loose cigarettes.

The Division's representative stated that Utah Code Ann. §59-14-205(8) imposes a penalty of \$25 for each offense. He noted that under Subsection (8)(b), each article, package, or container is considered a separate offense and that a single loose cigarette is one article. The Division's representative argued that there was a clear violation of the Cigarette and Tobacco Tax and Licensing Act by the Petitioner and maintained that the Division's imposition of the penalty was appropriate. He stated that in Appeal No. 16-1424¹, the Commission determined that it did not have the discretion to waive, reduce, or comprise penalties that are imposed under Utah Code Ann. §59-14-205. Thus, it is the Division's position that the penalties should be upheld by the Commission.

Utah Code Ann. §59-14-201 makes it unlawful to sell cigarettes in this state without a license. Petitioner applied for, and held such a license (Account No. #####), which had an expiration date of MONTH DATE, YEAR. The Petitioner meets the definition of "retailer" in Utah Code Ann. §59-14-102, as Petitioner sells cigarettes to consumers in the state.

Petitioner had ##### individual loose cigarettes for sale and thus had improperly stamped and/or unstamped cigarettes for sale. Utah Code Ann. §59-14-205 requires a stamp, indicating that tax has

¹ Prior Commission decisions are available online in redacted form at tax.utah.gov/commission/decisions.

properly been paid, on each pack of cigarettes for sale in this state. The Division's employees seized ##### loose cigarettes from Petitioner that were not stamped or were improperly stamped. Subsection (8)(b) of Utah Code Ann. §59-14-205 provides, "the presence of any package or container in a place of business conducting retail sales shall be prima facie evidence that it is intended for sale and subject to taxes under this chapter." Further, the Petitioner's representative acknowledged that the Petitioner was selling loose cigarettes. As the Petitioner is a licensed retailer of cigarettes, the cigarettes seized by the Division were intended for sale, subject to tax, and thus required to be properly stamped.

The Division properly imposed a penalty of \$\$\$\$\$. Utah Code Ann. §59-14-205 imposes a penalty for failing to properly affix stamps to cigarettes. The penalty is \$\$\$\$\$ for each offense. Subsection (8)(b) specifically provides that "each article, package or container found not having proper stamps affixed to the article, package, or container is a separate offense." The Division seized ##### loose cigarettes that did not have a proper stamp affixed. Each of the ##### cigarettes seized is an article and is thus a separate offense and subject to a penalty of \$\$\$\$\$, for a total of \$\$\$\$\$.

The Commission does not have discretion to waive, reduce, or compromise the penalty assessed under Utah Code Ann. §59-14-205. The Petitioner's representative has asked the Commission to waive the penalty. Utah Code Ann. §59-14-103 grants the Commission the authority to waive, reduce, or compromise certain penalties imposed under the Cigarette and Tobacco Tax and Licensing Act. Those penalties are specifically enumerated and do not include the penalties imposed under Utah Code Ann. §59-14-205(8). Regardless of any mitigating factors, such as this being the first violation, the Legislature has not granted the Commission discretion to waive or reduce the penalties assessed under Utah Code Ann. §59-14-205(8).

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Petitioner's request for a waiver of penalties. 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, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division

Appeal No. 25-1449

210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:

taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2026.

John L. Valentine
Commission Chair

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

John T. Deeds
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.