

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

---

VANCE J. HEINEMANN,	)	DOCKET NO.: MT-2007-48
	)	
Appellant,	)	
	)	
-v-	)	FACTUAL BACKGROUND,
	)	PRINCIPLES OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
	)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,	)	
	)	
Respondent.	)	
	)	

---

STATEMENT OF CASE

The Taxpayer was assessed \$595.00 plus interest and penalty for purchasing tobacco products without paying the required tax due. He seeks dismissal of the taxes due. By agreement of the parties, the matter before the Board was heard on the record. The parties were given opportunity to provide evidence and argument to the Board.

ISSUES

The Taxpayer asserts that this is unfair taxation and he should not be responsible for the tobacco taxes. **The issue is:** Are taxes due and owing on tobacco products purchased through the internet from an entity existing outside the State of Montana and shipped to a purchaser residing in Montana?

## PRINCIPLES OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter pursuant to § 16-11-149, MCA and § 15-2-302, MCA.
2. The DOR administers certain tobacco tax laws. *See, e.g.,* § 16-11-103, MCA. For example, if a person fails or refuses to pay the required tobacco product tax when due, the DOR shall determine the tax due and assess tax and penalty. (Section 16-11-143(1), MCA). The tax on each package containing 20 cigarettes is \$.70 prior to January 1, 2005, and \$1.70 after that date. (Section 16-11-111(1), MCA).
3. **Tax on ultimate consumer.** All taxes paid pursuant to § 16-11-111, MCA, shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. (Section 16-11-112, MCA).
4. The federal Jenkins Act requires any person selling or transferring cigarettes for profit to report to the state tobacco tax administrator every shipment of cigarettes into a state. (15 U.S.C. § 376(a)).
5. Montana law requires a person who has made a sale or delivered, mailed, or shipped tobacco products into Montana to report those transactions to the DOR. (Section 16-11-128(2), MCA).
6. All taxes paid pursuant to § 16-11-111, MCA, are conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. The full face value of the insignia or tax shall be added to the cost of the cigarettes and

recovered from the ultimate consumer or user. When the tax is paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of cigarettes and recovered from the ultimate consumer or user. (Section 16-11-112, MCA).

7. If a person fails or refuses to pay the required tobacco product tax when due, the DOR shall determine the tax due and assess tax and penalty. (Section 16-11-143(1), MCA).
8. Montana statute makes it unlawful for a person to use or consume a cigarette within this state if it is taken from a package that does not bear the required insignia. This statute may not be construed to prohibit a natural person from physically transporting into the state of Montana for the person's own personal consumption or use a specified number of cigarettes as long as they bear the tax insignia of another state. (Section 16-11-133, MCA).

#### **FINDINGS OF FACT**

1. On or about February 23, 2007, the DOR sent two letters to the Taxpayer regarding untaxed tobacco product purchases. These letters outlined the Montana Tobacco Laws forbidding an individual from selling, using or consuming contraband tobacco products. (Taxpayer Exhibit)
2. The DOR informed the Taxpayer that the information showed that he purchased cigarettes directly from out-of-state distributors without paying the requisite tobacco tax. The DOR encouraged the Taxpayer to comply

with Montana law and pay the tobacco tax without any added penalties or interest. The DOR enclosed a Tobacco Product Self-Reporting Form and requested payment with a completed form within 30 days. (DOR Statement of Account). The DOR indicated a specific amount of tax owed.

3. The Taxpayer does not deny that he purchased tobacco products from senecacommerce.com.
4. The Taxpayer paid the full amount of tax due under protest.
5. The Taxpayer believes the taxes on cigarettes in Montana to be unfair and unreasonable.
6. The Taxpayer sent a letter to the Board opposing the DOR tax assessment. (Letter to STAB received March 10, 2007). The Board accepted the appeal. The DOR submitted an answer dated April 16, 2007.

#### **BOARD DISCUSSION and CONCLUSIONS OF LAW**

The Taxpayer believes it is not right for the State of Montana to force him to only buy within Montana. He also believes taxes on cigarettes in Montana to be unfair and unreasonable.

Montana voters imposed certain tobacco taxes through the initiative process. The Legislature statutorily granted the DOR the authority and means to collect these taxes.

Pursuant to those statutes, the DOR administers certain tobacco tax laws. *See, e.g.* § 16-11-103, MCA. For example, if a person fails or refuses to pay the required tobacco product tax when due, the DOR shall determine the tax due and assess tax and penalty. (Section 16-11-143(1), MCA).

Statutes require a cigarette distributor to inform the DOR of the amount an individual purchased. See § 16-11-128, MCA. There is also a method for the DOR to collect such taxes. See, e.g., § 16-11-142, 149, et seq. Thus, the statutes read as a whole contemplate that the DOR must notify the ultimate user of the tax due for the purposes of collection or create some method for the Taxpayer to submit the tax due.

In this instance, senecacommerce.com reported the sale of cigarettes to the DOR pursuant to § 16-11-128, MCA, and 15 U.S.C §376. The DOR calculated the Montana tax owed on the cigarettes at \$595.00.

The Taxpayer is the admitted ultimate consumer or user of the cigarettes ordered from Senecacommerce.com. Pursuant to § 16-11-112, MCA, he is therefore required to pay taxes on the purchased cigarettes.

This Board has the authority to confirm the assessment of legally imposed taxes on individuals in Montana. Because the Taxpayer purchased cigarettes from an out-of-state distributor who did not precollect Montana taxes and because the DOR is required to collect those taxes from the ultimate consumer, we conclude the taxes are properly due and owing in this instance.

//  
//  
//  
//  
//  
//  
//

ORDER


IT IS THEREFORE ORDERED that taxes in the amount of \$595.00 are properly assessed and due from Vance J. Heinemann.

Dated this 13<sup>th</sup> day of September, 2007.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

  
KAREN E. POWELL, Chairwoman

  
SUE BARTLETT, Member

  
DOUGLAS A. KAERCHER, Member

**NOTICE:** You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA and Section 16-11-150, MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this \_\_\_\_\_ day of September, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Vance J. Heinemann  
P.O. Box 17  
Grey Cliff, Montana 59033

Tax Counsel  
Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, MT 59620

---

DONNA EUBANK  
Paralegal