

1. BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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SUZIE SNEED, ) DOCKET NO.: MT-2006-3  
 )  
Appellant, )  
 )  
-vs- )  
 )  
THE DEPARTMENT OF REVENUE ) FACTUAL BACKGROUND,  
 ) CONCLUSIONS OF LAW  
OF THE STATE OF MONTANA, ) ORDER and OPPORTUNITY  
 ) FOR JUDICIAL REVIEW  
Respondent. )  
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The above-entitled appeal was heard telephonically on December 5, 2006, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was given as required by law. Susie Sneed (appellant) represented herself and provided testimony in support of the appeal. The Department of Revenue (DOR) was represented by Keith Jones, tax counsel. DOR presented evidence and argument in opposition to the appeal.

**Findings of Fact**

On or about March 13, 2006, the DOR sent a letter to Ms. Sneed informing her that out of state tobacco product distributors shipping cigarette and/or other tobacco products into Montana are required to submit a monthly sales report. Upon review of sales reports, the DOR informed Ms. Sneed that the information showed that she purchased cigarettes directly from out of state distributors without paying the requisite

tobacco tax. The DOR encouraged Ms. Sneed 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. (DOR letter dated March 13, 2006.)

The DOR sent a second letter dated June 7, 2006, again asking Ms. Sneed to comply with Montana law and pay the cigarette tax owed. The DOR informed Ms. Sneed that she would be subject to specific penalties and interest if the tax was not remitted within 10 days. (DOR Letter dated June 7, 2006.)

The letter further related that additional civil penalties might be imposed as well as the possibilities of misdemeanor violations relating to buying, receiving, and/or possessing contraband tobacco products. (DOR letter dated June 7, 2006.)

The DOR sent a subsequent letter dated September 22, 2006, informing Ms. Sneed she owed taxes, interest and penalties on cigarette purchases due to failure to report tobacco products and pay the tobacco tax as requested in previous letters. Included with the letter was a Statement of Account with Appeal Rights set forth.

Those appeal rights included information informing Ms. Sneed that written objection could be filed with the State Tax Appeal Board within 30 days of receiving the notification. (Statement of Account, dated September 21, 2006.)

Ms. Sneed sent a letter to the State Tax Appeal Board opposing the DOR assessment of tax. (Letter to STAB, received September 29, 2006.)

The State Tax Appeal Board accepted the appeal. The Department of Revenue submitted an Answer. A hearing was subsequently held on December 5, 2006, via telephone.

Ms. Sneed testified that she was not notified that she would have to pay the tax on cigarettes ordered from out of state. She asked why there is no requirement to collect the taxes at the time of the sale. Ms. Sneed notes that a person may go to Canada and purchase cigarettes at the duty free store and that it is discriminatory to treat cigarette purchases through the mail with different tax requirements.

Ms. Sneed also testified that she has subsequently quit smoking, in part due to the high cost of cigarettes. Ms. Sneed felt that the tactics of tobacco taxation are underhanded and unlawful. She also informed the Board that she purchased some of those cigarettes on behalf of her husband, who also smoked. She only purchased cigarettes over the internet because she could not afford cigarettes in Montana and needed to find a less expensive source of cigarettes.

Ms. Sneed admitted that she did purchase over the internet all of the cigarettes alleged by the DOR as having taxes due.

Mr. Jones submitted exhibits and provided argument on behalf of the DOR. He noted that the statutes are designed to eradicate smoking. He also noted that the evidence shows that Ms. Sneed purchased cigarettes from Smartsmoker.com which is operating within a sovereign Indian Nation outside the borders of the State of Montana. Smartsmoker.com does not collect Montana cigarette tax.

The invoices for Smartsmoker.com state "As part of the Seneca Nation of Indians and the Iroquois Confederacy, we are currently not required to collect sales tax for products sold on Native land. Nonetheless, we are required under federal law to report all sales and shipments of cigarettes to the state taxing authority within your home state. You should contact the taxing authority within your state to determine your tax obligation on the use of these products within your state." (Copy of Smartsmoker.com Invoices dated May 4, 2005, through January 2, 2006.) Ms. Sneed testified that she did not notice the invoices and did not see this statement.

The State Tax Appeal Board closed the hearing but allowed the record to remain open for additional submissions requested by the Board.

#### **Board Discussion**

The State Tax Appeal Board has jurisdiction over this matter pursuant to § 16-11-149, MCA and § 15-2-302, MCA.

The Department of Revenue administers certain tobacco tax laws. See, e.g. § 16-11-103, MCA. If a person fails or refuses to pay the tobacco product tax required when due, the Department shall determine the tax due and assess tax and penalty. Section 16-11-143(1), MCA. The tax is \$1.70 on each package containing 20 cigarettes. Section 16-11-111(1), MCA.

Pursuant to § 16-11-128, MCA, prior to delivering, mailing, or shipping tobacco products into Montana to a person other than a licensed wholesaler or retailer, a person who accepts purchase orders for tobacco products shall file a statement with the Department setting forth certain information, including the name and address of the consumer to whom the sale was made, the brand of tobacco sold and the quantity of tobacco sold. See also, 15 U.S.C. §376.

In this instance, Smartsmoker.com reported cigarette sales to Ms. Sneed of at least 157 cartons. The Montana tax owed on this amount is \$2669.00. The Department argues that Ms. Sneed, as the ultimate consumer, is required to pay the taxes on the cigarettes she purchased through the mail from an internet vendor.

Section 16-11-112, MCA states:

**Tax on Ultimate Consumer.** All taxes paid pursuant to 16-11-111 shall be 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. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax.

In this matter, no cigarette taxes have been paid on the cigarettes in question. Pursuant to the above section, Ms. Sneed is the admitted ultimate consumer or user of the cigarettes ordered from Smartsmoker.com. Although she indicated that she purchased certain of the cigarettes for her husband, no evidence of what quantity was provided to this Board. Thus, as the statute states that the tax shall be recovered from the ultimate user, and no tax has yet been paid in this matter, the tax must be paid by the ultimate user, Ms. Sneed.

Ms. Sneed admitted to ordering the cigarettes, and ultimately consuming at least some quantity. The DOR contacted Ms. Sneed on multiple occasions to encourage compliance with the law and avoid penalty and interest requirements. Ms. Sneed failed to respond until she filed an appeal with this Board. In this matter, the DOR assessment is upheld.

ORDER

The Board hereby orders that the taxes in the amount of \$2669.00 are properly due and owing from Ms. Sneed. It is further ordered that penalties and interest associated with this assessment are owed from March 13, 2006 through September 29, 2006. This Board urges the Department to adopt as lenient a repayment program as possible.

DATED this 2nd day of January, 2007.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

/s/ \_\_\_\_\_  
KAREN E. POWELL, Chairwoman

/s/ \_\_\_\_\_  
JOE R. ROBERTS, Member

/s/ \_\_\_\_\_  
SUE BARTLETT, Member

**Notice:** You are entitled to judicial review of this Order in accordance with § 16-11-150 and § 15-2- 303,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 3rd day of January, 2007, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

Suzie Sneed  
110 3<sup>rd</sup> Avenue  
Cut Bank, Montana 59427

Keith Jones  
Tax Counsel  
Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
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DONNA EUBANK  
Paralegal