

08-2168
AUDIT
TAX YEAR: 2008
SIGNED: 02-09-09
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, D. DIXON
EXCUSED: M. JOHNSON
GUIDING DECISIONS

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 08-2168</p> <p>Account No. ##### Tax Type: Audit – Sales Tax Tax Year: 2008</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER, *Pro Se*
 PETITIONER REP, *Pro Se*
For Respondent: RESPONDENT REP 1, Assistant Attorney General
 REPSOENEDENT REP 2, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on January 27, 2009. The Taxpayer requested a waiver of the tax and interest assessed as a result of a sales tax audit on the purchase of a motor vehicle. The Taxpayer was assessed \$\$\$\$ in additional tax and interest in the amount of \$\$\$\$\$, which continues to accrue on the unpaid balance.

APPLICABLE LAW

Sales tax is imposed on certain transactions as set forth in Utah Code Ann. §59-12-103, below 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:

- (a) retail sales of tangible personal property made within the state...

Utah Code Ann. §59-12-103 (2008).

“Retail sale” is defined in Utah Code Ann. §59-12-102(81), as follows:

“Retail sale” or “sales at retail” means a sale, lease, or rental for a purpose other than:

- (a) resale;
- (b) sublease; or
- (c) subrent.

Utah Code Ann. §59-12-102(81) (2008).

Utah Code Ann. §59-12-104 provides for certain exemptions from sales and use tax, as follows in pertinent part:

The following sales and uses are exempt from the taxes imposed by this chapter:

- (23) property stored in the state for resale...
- (24) 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.

Utah Code Ann. §59-12-104 (2008).

On the purchase of a vehicle from someone other than a licensed vehicle dealer, sales tax is paid directly to the Commission, as set forth in Utah Code Ann. §59-12-107(4), below:

- (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to titling or registration under the laws of this state.
- (b) The commission shall collect the tax described in Subsection (4)(a) when the vehicle is titled or registered.

Utah Code Ann. §59-12-107(4) (2008).

A certificate of title is required, as set forth in Utah Code Ann. §41-1a-501, below:

Unless exempted, each owner of a motor vehicle, vessel, outboard motor, trailer, semitrailer, manufactured home, mobile home, or off-highway vehicle shall apply to the division for a certificate of title on forms furnished by the division as evidence of ownership.

Utah Code Ann. §41-1a-501 (2008).

Section 59-1-402(5) of the Utah Code provides, “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.” Utah Code Ann. §59-1-402(5) (2008).

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(13) of the Utah Code provides, “Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.” Utah Code Ann. §59-1-401(13) (2008).

DISCUSSION

Taxpayer requested a waiver of the tax and interest assessed as a part of the Division’s audit. On April 2, 2008, Taxpayer purchased a 2005 Ford Taurus from his former employer, for \$\$\$\$\$. Taxpayer’s former employer provided some of its employees with vehicles that were owned by a fleet company. Taxpayer explained that after three years, the company would make the vehicles available for purchase, but only to employees.

Taxpayer purchased the vehicle with the intent of immediately selling it to his sister. He only purchased the vehicle because the company could not or would not sell it directly to his sister. When Taxpayer purchased the vehicle it had 60,868 miles. The certificate of title reflects Taxpayer selling the vehicle for the same purchase price, \$\$\$\$\$, and that the odometer had only 60,870 miles on it.

Taxpayer’s wife testified that she telephoned the DMV in March to inquire as to whether they would be required to register, title, and pay sales tax on the purchase of the vehicle prior to selling it to Taxpayer’s sister. She stated that a DMV employee told her that when Taxpayer’s sister brought in the bill of sale, they would pay the sales tax. Taxpayer stated that had they been informed that sales tax and titling were required, they would have increased the purchase price for Taxpayer’s sister to cover those expenses.

Upon receiving the statutory notice of the audit, Taxpayer contacted the DMV on four separate occasions to determine how the DMV was directing people with the same situation. Each time, Taxpayer’s wife called the DMV at (801) 297-7780. Taxpayer relayed the following:

- a. On October 9, 2008, she spoke with someone named DMV EMPLOYEE 1, who gave her the same answer she received in March, that the Taxpayer’s sister would pay the sales tax when they registered the vehicle.
- b. On October 20, 2008, the Taxpayer’s wife spoke with DMV EMPLOYEE 2, and specifically inquired about what would happen when the DMV received the title showing that they had originally purchased the vehicle. The DMV representative

told the taxpayer's wife that the DMV would cancel the record upon seeing that the new purchaser had paid the sales tax.

- c. On October 21, 2008, the Taxpayer's wife spoke with DMV EMPLOYEE 3. She was told that when she filled out the reassignment of title, the new buyer would pay the sales tax when they registered the car.
- d. On October 22, 2008, the Taxpayer's wife spoke with DMV EMPLOYEE 4, who once again instructed the Taxpayer's wife that the new buyer would pay the sales tax.

Taxpayer provided a copy of his sister's receipt for the sales tax, registration, and titling of the vehicle. Taxpayer stated that it was the continual misinformation provided by the DMV that prompted him to file the appeal, and asked that the tax and the interest be waived.

The Division's representative pointed out that the Division did not assess any penalties because they it was apparent that the Taxpayer was acting in good faith. The Division's representative stated that because sales tax is a transactional tax, it is charged every time ownership of the vehicle changes. It is the Division's position that Taxpayer was required to apply for a certificate of title under Utah Code Ann. §41-1a-501, and that the sales tax was due under Utah Code Ann. §59-12-107(4)(a) because the vehicle was required to have a title issued. The Division's representative stated that though the Taxpayer wasn't required to register the vehicle if it was not being used, that he was required to have title. The Division's representative acknowledged that this is a unique case where the title was transferred within two days of Taxpayer's purchase and that there were only two additional miles on the odometer; however, he was unaware of any exception that would allow for a waiver of the tax liability.

Sales tax is a transactional tax on the retail sale of tangible personal property. Taxpayer argued that the tax and interest should be waived because they were provided erroneous information from the DMV. The Division argued that the Taxpayer was required to apply for a certificate of title and pay the sales tax at that time. Certain transactions are exempt from sales tax, including the storage of property in the state for resale and property purchased for resale in the ordinary course of business. The current issue does not appear to fall directly under either of those exemptions.

However, even though neither party cited to the statute, the Commission finds that the definition of "retail sale" under Utah Code Ann. §59-12-102(81) is determinative. Utah Code Ann. §59-12-103(1) imposes tax on the purchaser of a *retail sale* of tangible personal property. A "retail sale" is a sale for a purpose other than resale. The Taxpayer purchased the vehicle for the sole purpose of selling it to his sister. The Taxpayer testified that because of company restrictions, his sister was not able to purchase the vehicle directly from Taxpayer's employer.

Taxpayer's testimony is corroborated by dates of the two transactions and the mileage on the vehicle. The Commission finds that the Taxpayer purchased the vehicle for resale, and therefore the transaction is not taxable.

The Taxpayer also requested a waiver of interest assessed as part of the audit on the grounds that Tax Commission employees provided him with erroneous information. The Commission finds that the DMV employees did not provide Taxpayer with erroneous information. The DMV employees were correct in advising the Taxpayer that sales tax would not be due on his purchase of the vehicle because he purchased it for resale. As the Commission has determined the transaction was not taxable, there would be no interest due.

DECISION AND ORDER

Based on the foregoing, the Commission abates the tax and interest assessed under the Division's sales tax audit. 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 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 _____, 2009.

Jan Marshall
Administrative Law Judge

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

Appeal No. 08-2168

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

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