

11-3060  
TAX TYPE: SALES AND USE TAX  
TAX YEAR: 2008, 2009, 2010 AND 2011  
DATE SIGNED: 10-29-2012  
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN  
EXCUSED: M. JOHNSON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYER,

Petitioner,

v.

AUDITING DIVISION OF THE  
UTAH STATE TAX COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 11-3060

Account No. #####

Tax Type: Sales & Use Tax

Tax Year: 2008, 2009, 2010 and 2011

Judge: Marshall

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**Presiding:**

Jan Marshall, Administrative Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General  
RESPONDENT-1, Auditing Division  
RESPONDENT-2, Auditing Division  
RESPONDENT-3, Auditing Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5, on July 31, 2012. The Taxpayer disputes the assessment of sales tax and interest assessed as part of a sales tax audit. Taxpayer was assessed \$\$\$\$ in tax and interest in the amount of \$\$\$\$\$. Interest continues to accrue on any unpaid balance.

APPLICABLE LAW

Sales tax is imposed on certain transactions as set forth in Utah Code Ann. §59-12-103<sup>1</sup>, below in relevant part:

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<sup>1</sup> The Commission cites to the code sections that were in effect in 2008.

- (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. §59-12-104 exempts certain transactions from sales and use tax as follows:

- (8) sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled...

Utah Code Ann. §59-12-104.1 provides additional information on exemptions for religious or charitable institutions, as follows:

- (2) (a) Except as provided in Section 59-12-104, sales made to a religious or charitable institution or organization are exempt from the sales and use tax imposed by this chapter if the sale is made in the conduct of the institution's or organization's regular religious or charitable functions and activities.

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

The Commission has promulgated Administrative Rule R865-19S-58(2)(d), which provides as follows:

Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax if:

- (i) The religious or charitable institution makes payment for the materials directly to the vendor; or
- (ii) (A) the materials are purchased on behalf of the religious or charitable institution.  
(B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

### DISCUSSION

The Division issued a Statutory Notice of the findings of its sales and use tax audit on November 14, 2011. The Division assessed tax in the amount of \$\$\$\$ in tax and interest in the amount of \$\$\$\$ through December 14, 2011. The items on the audit schedule were purchases by faculty or administrative staff of the Taxpayer. Payment for the items was first advanced by the individuals, who then sought reimbursement from Taxpayer. It is not disputed that the items purchased were for school purposes, but rather they were not purchased in the correct manner to qualify for a refund of the sales tax.

The Taxpayer's representative stated that Taxpayer is an INSTITUTION and argued it was a large task for a group like theirs to be aware of the administrative rule and fully comprehend it. He stated that a large university, or non-profit hospital would have the capabilities to hire individuals to deal with these issues, but the Taxpayer does not. He explained that trying to understand Administrative Rule R865-19S-58 is tricky; but they have instituted changes to comply with the rule. He stated that it has made their purchasing a little more

challenging, but they now understand how they should be handling transactions. The Taxpayer's representative argued that the State of Utah is not out any money, because had the Taxpayer made the purchases directly, rather than reimbursing employees for the purchases, the Division would not have disallowed the refunded amounts on the audit.

The Division's representative noted that under Utah Code Ann. §59-12-104(8) and Utah Code Ann. §59-12-104.1, sales made to religious or charitable organizations are exempt from sales and use tax, if made in the conduct of the religious or charitable functions. The Division focused on the statutory language, specifically the phrase, "sales made to a religious or charitable institution". The Division's representative stated that Administrative Rule R865-19S-58(2)(d) was provided to clarify the statutes, and clarifies that the sales must be made directly to the institution. He stated that because of the direction from the Commission in PLR 08-014<sup>2</sup> and the plain language of the statutes, the Division has adopted the position that the Taxpayer is not entitled to a refund of the sales tax. The Division's representative stated that they understand and sympathize with the equitable reasons the Taxpayer has set forth, but noted that the burden of proof is on the Taxpayer in this matter. He further noted that the purpose of the appeals process is to make sure that the tax liability is correct, and noted that if the Taxpayer is unable to pay the tax, there are other programs available, that Taxpayer can go through once the appeals process is complete. The Division's representative stated that he is unaware of legally justifiable reason to waive the tax liability.

The Taxpayer's representative stated that when they read the statute, they believed it did not matter whether their staff purchased items and were reimbursed, or if the purchases were made directly by the institution. He argued that the faculty and staff were agents of Taxpayer and were acting on their behalf when the purchases were made. The Taxpayer's representative stated that they have approximately ##### employees who do their best to comply with all federal and state laws, and asked for relief from the tax liability.

There is no question that sales tax should have been assessed on the transactions at issue under Utah Code Ann. §59-12-103(1). At issue is whether the transactions qualify for an exemption under Utah Code Ann. §59-12-104(8) and Utah Code Ann. §59-12-104.1. The plain language of both statutes allows for an exemption if the sale is "made to" a religious or charitable institution. Further, Administrative Rule R865-19S-58(2)(d)(i) requires that the religious or charitable institution make payment directly to the vendor. The purchases at issue were made by employees of the institution, and not "made to" the Taxpayer as required by statute. The audit assessment should be sustained.

Interest was assessed pursuant to Utah Code Ann. §59-1-402(5). The Commission has discretion to waive interest under Utah Code Ann. §59-1-401(13). The Commission has promulgated Administrative Rule

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<sup>2</sup> In PLR 08-014, the Commission determined that a university did not qualify to recover sales tax paid by its employees who were reimbursed by the University.

R861-1A-42, which provides the following in regard to a request for a waiver of interest, “[t]o be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” Taxpayer has not shown there to be an error on the part of the Tax Commission, or that a Tax Commission employee provided them with erroneous information. There is not reasonable cause to waive the interest assessed.

As noted at the hearing, the purpose of the appeals process is to determine the correct amount of tax liability. If the Taxpayer does not have the ability to pay the assessment, the Tax Commission does have other programs in place that may offer some relief. Taxpayer may contact the Taxpayer Services Division at (801) 297-7703 to inquire as to whether they qualify for any of these programs.

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Jan Marshall  
Administrative Law Judge

**DECISION AND ORDER**

Based on the foregoing, the Commission sustains the Division’s audit assessment of tax and interest for the periods at issue. 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 \_\_\_\_\_, 2012.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D’Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner