

03-1373
Audit
Signed 09/26/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,	)	Appeal No.	03-1373
)		
v.	)	Account No.	#####
)		
AUDITING DIVISION	)	Tax Type:	Sales Tax
OF THE UTAH STATE TAX)		
COMMISSION,	)	Tax Year:	02/01/00 to 10/31/02
)		
Respondent.	)	Judge:	Davis

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Attorney at Law

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from the 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 May 17, 2005.

Petitioner is a company that is involved in the creation and installation of cabinets, and their Utah operation is located in CITY, Utah. Petitioner also has operations located in the State of STATE.

On September 24, 2003, Respondent sent to Petitioner, together with COMPANY of STATE, a Statutory Notice for sales and use tax, imposing additional taxes upon Petitioner, together with interest in the total amount of \$\$\$\$\$, plus interest accruing thereafter at the statutory rate.

Petitioner timely challenged that statutory notice in regard to six separate issues. During the time following the filing of a Petition for Redetermination, and the time of the hearing of this matter, the parties have come to an agreement on most of the issues.

One of the issues involved transactions for which sales tax should have been paid to the State of Utah, but was instead paid to the State of STATE. Through discussions and the filing of a claim with the State of STATE, Petitioner received a refund from the State of STATE in an amount of approximately \$\$\$\$\$. That amount has been paid to the State of Utah, which is the state in which the tax should have been accrued and paid. In addition, Petitioner has conceded some of the issues, and has acknowledged that tax is appropriately due to the State of Utah.

Following all of the discussions and negotiations between the parties, and the payment of the amount to the State of Utah received from the State of STATE, there are two issues remaining. First, whether some of the items purchased were exempt from sales tax in Utah because of the provisions of Utah Code Ann. §59-12-104(14), commonly referred to as the manufacturers exemption, and second, whether interest on the amounts due should be waived by the Commission pursuant to the provisions of Utah Code Ann. §59-1-401(10).

With respect to whether or not certain purchases made by Petitioner qualified for the manufacturers exemption, it is acknowledged by both parties that some of the requirements of the statute are met by Petitioner. However, Respondent challenges the qualification for that exemption on two grounds. First, Respondent does not agree that Petitioner meets the definition of a "manufacturing facility" pursuant to the provisions of Utah Code Ann. §59-12-102(39), because

Respondent does not agree that it is an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual, and secondly, Respondent maintains that Petitioner does not "manufacture an item sold as tangible personal property" as required by Utah Code Ann. §59-12-104(14).

During the hearing, it was represented without challenge that at least 90% of the cabinets produced by Petitioner are sold to building contractors, with the cabinets being installed by employees of PETITIONER in the buildings for the contractors, and approximately 10% of the sales being made to private purchasers for homes. However, a letter was submitted by legal counsel for Petitioner, Exhibit R-3, in which it was represented that the retail sales for which the cabinets were not installed was only approximately one-half of 1% of the total sales.

APPLICABLE LAW

Utah Code Ann. §59-12-104(14), provides an exemption from sales tax for certain transactions, and states in relevant part as follows:

(14)(a) the following purchases or leases by a manufacturer on or after July 1, 1995:

- (i) machinery and equipment:
 - (A) used in the manufacturing process;
 - (B) having an economic life of three or more years; and
 - (C) used:
 - (I) to manufacture an item sold as tangible personal property; and
 - (II) in new or expanding operations in a manufacturing facility in the state; and
- (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:
 - (A) have an economic life of three or more years;
 - (B) are used in the manufacturing process in a manufacturing facility in the state;

- (C) are used to replace or adapt an existing machine to extend the normal estimated useful life of the machine; and
- (D) do not include repairs and maintenance;

••••

(c) for purposes of this Subsection (14), the commission shall by rule define the terms "new or expanding operations" and "establishment";

Utah Code Ann. §59-12-102(39) provides in relevant part as follows:

(39) For purposes of subsection 59-12-104(14), "manufacturing facility" means:

- (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

The 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget contains the following definitions for SIC Code Nos. 1751, Carpentry work, 2434, wood kitchen cabinets, and 5712, furniture stores.

2434 Wood Kitchen Cabinets

Establishments primarily engaged in manufacturing wood kitchen cabinets and wood bathroom vanities, generally for permanent installation. Establishments primarily engaged in manufacturing free-standing cabinets and vanities are classified in Major Group 25. Establishments primarily engaged in building custom cabinets for individuals are classified in Retail Trade, Industry 5712.

Cabinets, wood: to be installed

Vanities, bathroom, wood: to be installed

Kitchen cabinets, wood: to be installed

1751 Carpentry Work

Special trade contractors primarily engaged in carpentry work. Establishments primarily engaged in building and installing cabinets at the job site are classified in this industry. Establishments primarily engaged in building custom cabinets for individuals in a shop are classified in Retail Trade, Industry 5712. Carpentry work performed by general contractors engaged in building construction is classified in Major Group 15.

Cabinet work performed at the construction site	Joinery, ship-contractors
Carpentry work-contractors	Ship joinery-contractors
Folding door installation-contractors	Store fixture installation-contractors
Framing-contractors	Trim and finish-contractors
Garage door installation-contractors	Window and door (prefabricated) installation-contractors

5712 Furniture Stores

Establishments primarily engaged in the retail sale of household furniture. These stores may also sell homefurnishings, major appliances, and floor coverings.

Beds and springs-retail	Juvenile furniture-retail
Cabinet work on a custom basis to individual order-retail	Mattress stores, including custom made-retail
Cabinets, kitchen: not built in-retail	Outdoor furniture-retail
Furniture, custom made-retail	Waterbeds-retail
Furniture, household, with or without Furnishings and appliances-retail	

DISCUSSION AND CONCLUSIONS OF LAW

Petitioner argues that it meets the SIC Code Classification of 2434, which would be within the Classification Codes of 2000 – 3999 for manufacturing.

Respondent argues that Petitioner is either in SIC Code 1751 for carpentry work, or 5712 as a furniture store. Both of these classifications are not within the qualifying SIC Codes.

In reviewing the proposals of the parties, it is possible that Petitioner could do "cabinet work on a custom basis to individual order – retail, or cabinets, kitchen: not built in. However, it is more likely that they are either under SIC Code 1751 or 2434. In reviewing the three classifications submitted by the parties, SIC Code 1751 includes "building and installing cabinets at the jobsite, whereas SIC Code 2434 includes cabinets and kitchen cabinets "to be installed". In this

Appeal No. 03-1373

case, Petitioner's legal counsel represented that less than one-half of 1% of the work was for cabinets that were not installed. That would mean that approximately 99.5% of the cabinets are actually installed. Therefore, SIC Code 2434 does not fit the majority of the work as described by Petitioner.

Accordingly, the Commission does not need to decide whether Petitioner's business would really be under 1751, or 5712, but it does not appear to meet the definition described in SIC Code 2434 of the Standard SIC Code Manual.

In addition, Utah Code Ann. §59-12-104 requires that for the equipment to qualify for the manufacturers exemption, it must be used "to manufacture an item sold as tangible personal property;" Petitioner has acknowledged that almost all of the products are installed by its own employees, which means that Petitioner has converted the property to real property. Therefore, its products are not "sold as tangible personal property." Accordingly, the equipment purchases made by Petitioner do not qualify for the manufacturers exemption because they do not fit the required SIC Code Classification, and its products are not "sold as tangible personal property."

With respect to the request to waive the interest on the assessment, the only reasons presented for waiver of the interest were because the tax was, in good faith, paid to the State of STATE instead of the State of Utah, and the tax rate is higher in STATE than in Utah. However, the Commission determines that the State of Utah was denied the use of the money during the time periods at issue. Therefore, the State of Utah is entitled to interest on the money, and the statute does require the payment of interest unless there is good cause for waiving such interest. The Commission does not find such good cause existing in this matter to waive the interest. The fact that

Appeal No. 03-1373

Petitioner may have paid the amount to the State of STATE demonstrates that there was not an improper motive on behalf of Petitioner in not paying the tax to Utah, but it does not mean that interest should not be paid, and it does not demonstrate "reasonable cause" to waive the interest. Further, because STATE had the money of Petitioner during the time periods at issue, the issue of whether or not interest should be paid to Petitioner by STATE is between Petitioner and STATE. That issue is not between Petitioner and the State of Utah.

DECISION AND ORDER

Based upon the foregoing, the Commission hereby determines that the purchase of equipment by Petitioner did not qualify for the manufacturer's exemption pursuant to the Utah Statutes, and Petitioner is not entitled to a waiver of interest on the amounts due. Therefore, the Petition for Redetermination is hereby denied, and the audit assessment of Respondent is hereby sustained. 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

Appeal No. 03-1373

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

DATED this _____ day of _____, 2005.

G. Blaine Davis
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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

GBD/ssw/03-1373.int