

03-1463  
TAX TYPE: PERSONAL PROPERTY  
TAX YEAR: 2003  
DATE SIGNED: 9-26-2005  
COMMISSIONERS: B. JOHNSON, P. DEPAULIS, M. JOHNSON  
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	)	<b>ORDER ON MOTION</b>
	)	
Petitioner,	)	Appeal No.    03-1463
	)	
v.	)	Account No.    #####
	)	
BOARD OF EQUALIZATION	)	Tax Type:    Personal Property Tax
OF SALT LAKE COUNTY,	)	/ Locally Assessed Property
STATE OF UTAH,	)	Tax Year:    2003
	)	
Respondent.	)	Judge:        Davis

---

**Presiding:**  
G. Blaine Davis, Administrative Law Judge

**Appearances:**  
For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, from the law firm of NAME  
REPRESENTATIVE-2 FOR PETITIONER, from the law firm of NAME  
REPRESENTATIVE-3 FOR PETITIONER, from the law firm of NAME  
For Respondent: REPRESENTATIVE FOR RESPONDENT, Deputy, Salt Lake County  
District Attorney  
RESPONDENT, Salt Lake County Assessor's Office

STATEMENT OF THE CASE

This matter came on for Oral Arguments before the Utah State Tax Commission on a Motion For Summary Judgment on June 8, 2005.

The issue in this matter is whether the personal property owned by Petitioner is exempt from property tax pursuant to the provisions of Utah Code Ann. §59-2-1114, as "inventory" "held for sale in the ordinary course of business."

PETITIONER, (WORDS REMOVED) [does] equipment rental and sales (WORDS REMOVED). As of January 1, 2003, the lien date at issue, PETITIONER conducted business in many

Appeal No. 03-1463

locations throughout the United States. Petitioner owned and operated ##### separate business locations in Salt Lake County.

Petitioner alleges that all of the equipment owned by PETITIONER is simultaneously "held for sale" or "lease," and for "rent." PETITIONER does not physically separate equipment "held for sale" and equipment held for "rent" or "lease". Petitioner alleges that all three types of transactions are simultaneously available to its customers based upon the needs of the customer.

Petitioner originally filed appeals for the years 2002 and 2003. However, in a prior order, based upon a Motion to Dismiss filed by Respondent, the Motion to Dismiss was granted as to the year 2002, but was denied for the year 2003. Therefore, this proceeding involves only the matters for 2003.

For 2002, Petitioner has represented that 80% of its revenues were from equipment rentals, 2% of its revenues were from the sale of new equipment, and 13% of its revenues were from the sale of used equipment. For the calendar year 2003, 83% of the revenues of Petitioner were received from equipment rentals, 4% of the revenues were from the sale of new equipment, and 8% of the revenues were from the sale of used equipment. Petitioner represented that its Salt Lake County stores acted as a dealer for several manufacturers, (WORDS REMOVED), and others.

Petitioner submitted its "Business Personal Property Statement and Asset List" to the Salt Lake County Assessor. Petitioner represented that on the lien date, Petitioner sold, leased or rented all of its equipment depending upon its customers needs and at the option of its customers. Any equipment for which the effective life had substantially expired, and which, in the judgment of PETITIONER was no longer suitable for rental or lease, was specifically identified or "flagged" for sale. However, Petitioner stated, all property that was not otherwise rented or leased on the lien date was held for sale in the normal course of the business of Petitioner.

In years prior to 2002, Petitioner included on its "Business Personal Property Statement and Asset List" ("the property returns") all of the property which it owned. However, for 2002, 2003, and later years, Petitioner omitted from the list all property which was not actually leased or rented on the lien

Appeal No. 03-1463

date. This caused a reduction of more than \$\$\$\$ in value from the prior year, and that substantial reduction caused Salt Lake County to audit the personal property of Petitioner. Based upon that audit, Respondent placed back on the property tax rolls all of the property removed from the list based upon the position of Petitioner that the property was exempt from property taxes as inventory held for sale in the ordinary course of business.

Respondent filed an Affidavit from RESPONDENT, who is employed as a Personal Property Audit Manager in the Salt Lake County Assessor's Office. The Affidavit of RESPONDENT represented that the County had not received any evidence from Petitioner of an arm's-length market sale of any property at any of its Salt Lake County locations, and at the time he visited the businesses, there were no indications to a walk-in customer, including the name of the store itself, that any of the equipment therein was held for sale. All equipment which he observed was labeled "available for rent", but there was nothing on the tags that indicated that the equipment was available for sale, or a sales price thereof. He did note that some consumable items, for use with the rental equipment, were available for sale.

Petitioner presented an Affidavit indicating that all property was simultaneously held for sale, for lease, or for rent, and the operations of the Utah stores were nearly identical to the operations of the Idaho stores.

Petitioner further presented a decision of the (X) County Board of Equalization in Idaho in which the property of Petitioner had been determined to be eligible for its inventory exemption, except for the property that was leased to its customers on the lien date.

#### APPLICABLE LAW

Utah Code Ann. §59-2-1114, provides in relevant part as follows:

(1) Tangible personal property present in Utah on the assessment date, at noon, held for sale in the ordinary course of business or for shipping to a final out-of-state destination within 12 months and which constitutes the inventory of any retailer, wholesaler, distributor, processor,

warehouseman, manufacturer, producer, gatherer, transporter, storage provider, farmer, or livestock raiser, is exempt from property taxation.

(2) This exemption does not apply to:

(a) inventory which is not otherwise subject to personal property taxation;

••••

(b) "Inventory" means all items of tangible personal property described as materials, containers, goods in process, finished goods, severed minerals, and other personal property owned by or in possession of the person claiming the exemption.

••••

(4) The commission may adopt rules to implement the inventory exemption.

Utah Administrative Code Rule R884-24P-33.C provides in relevant part as follows:

C. Other taxable personal property that is not included in the listed classes includes:

1. Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.
2. Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.
3. Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

#### DISCUSSION

Petitioner has argued that because the property was held for sale, lease, or rent, that it meets the statutory definition of being held for sale in the ordinary course of business. Respondent, on the other hand, argues that even if Petitioner does sell some of its property, that selling property is not the primary or principle business of Petitioner.

Neither of the attorneys for the parties referred to Utah Administrative Code Rule R884-24P-33.C, which seems to clearly answer the issue in this matter. That rule specifically states, "equipment leased or rented from inventory is subject to ad valorem tax" and "property held for rent or lease is taxable, and is not exempt as inventory." That rule is based upon a specific grant of authority from the legislature in Utah Code Ann. §59-2-1114(4) which states, "The commission may adopt rules to implement the inventory exemption".

Appeal No. 03-1463

Legal counsel for Petitioner argues that the State of Utah should rely upon the Idaho decision of the (X) County Board of Equalization. However, an analysis of the Idaho statute makes it clear that Idaho law is very different than Utah law. Idaho Code §63-602W specifically provides:

"(1) If any property, real or personal, which is exempted from taxation on the first day of January shall thereafter have a changed status during the year, either by change in ownership or otherwise, in a manner that if the changed status had existed on the first day of January the property would have been taxable at that time, then the property shall be assessed in the following manner: (an apportionment formula is then set forth). However, if the changed status results from the leasing or rental of property normally constituting business inventory, the same shall be subject to property tax only for the period it is so leased or rented and upon its return to business inventory shall again be exempt. . . ." (Emphasis added.)

Based upon the statute in Idaho, it is clear that property of Petitioner would only be charged property taxes for the period of time for which it was leased. For all other times, the property would be deemed to be inventory qualified for the inventory exemption within the State of Idaho. That same statutory framework does not exist in the State of Utah.

Even without the rule, the Commission determines that the property of Petitioner would not be eligible for the inventory exemption. In the case of Action T.V. v. County Board of Equalization of Salt Lake County, 986 P.2d, 108 (1999 Utah App.) the Utah Court of Appeals sustained a decision of the Utah State Tax Commission which held that rent-to-own personal property under rent-to-own contracts was subject to property taxes on January 1 of each of the tax years at issue. The Commission therefore deems that its prior decisions have been consistent with this court decision, and that prior decision of the Commission in Action T.V. was sustained by the Court of Appeals of Utah.

The finding of the Commission in this case, and of the Court of Appeals in the Action T.V. case, is also consistent with an Oregon Tax Court decision, H-P Ventures, Inc. v. Dep't of Revenue, 13 OR. Tax 330. In that case, the Oregon Tax Court stated:

"The statute exempts property "held for sale in the ordinary course of business." Taxpayer's business consists of 80 percent rentals and 20 percent sales. The court finds that property held for rent is not exempt because it is not "held for sale in the ordinary course of business." The language of the statute indicates the

legislature intended to exempt property which is primarily held for sale.

••••

However, a strict but reasonable construction would limit this phrase to property held or used by manufacturing and processing businesses. Otherwise, all personal property could be considered exempt under the philosophy of the ancient but cynical adage that "everything is for sale at the right price." The exemption in question is intended to benefit businesses which sell property in the ordinary course of business. It was not intended to exempt personal property which is used to produce rental income and later sold as an incidental benefit of its ownership.

The court concludes that the exemption is limited to property which is primarily held for sale. Although an incidental rental of property held for sale will not destroy the exemption, the burden of proof is on the taxpayer. In this case, Taxpayer's primary business is renting videos and therefore the video tapes are primarily held for rental. [FN2]" (Emphasis added.)

The Oregon Tax Court decision, as stated above, is consistent with the decision of the Commission in this case.

#### DECISION AND ORDER

Based upon the foregoing, the Commission determines that the property of Petitioner which is allegedly simultaneously held for the multipurposes of sale, lease, or rent, does not qualify for the inventory exemption set forth in Utah Code Ann. §59-2-1114. The summary judgment motion of Petitioner is therefore denied. However, there is an additional issue which is not resolved by this Motion, which is whether Salt Lake County's disallowance of the inventory exemption violates the uniformity provisions of the United States and Utah Constitution. In view of the decision in this matter, if Petitioner still desires to pursue that issue, it shall file a request for a hearing on that issue with the Commission within 30 days from the date of this Order. If such a request is not filed by Petitioner, the Commission will deem that Petitioner has determined to not pursue the issue further because of the ruling on its Motion for Summary Judgment, and the appeal will be deemed to have been dismissed. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
G. Blaine Davis  
Administrative Law Judge

Appeal No. 03-1463

BY ORDER OF THE COMMISSION.

The undersigned have reviewed this motion and concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. 59-1-601 and 63-46b-13 et. seq.