

04-0365
Audit
Signed 10/21/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	FINDINGS OF FACT, CONCLUSIONS
Petitioner,)	OF LAW, AND FINAL DECISION
)	
v.)	Appeal No. 04-0365
)	
AUDITING DIVISION OF)	Account No. #####
THE UTAH STATE)	Tax Type: Sales Tax
TAX COMMISSION,)	
)	Judge: Chapman
Respondent.)	

Presiding:

Palmer DePaulis, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
 PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, Auditing Division
 RESPONDENT REPRESENTATIVE 3, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 19, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is the sales and use tax.
2. Auditing Division ("Division") has assessed sales and use tax on the Petitioner's June 18, 2000 purchase of an airplane. On February 5, 2004, the Division issued a

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Statutory Notice in which it imposed additional sales and use tax in the amount of \$\$\$\$\$, based on a purchase price of \$\$\$\$\$ and a 6.00% sales tax rate.

3. The Petitioner proffers evidence to show that he purchased the airplane in Utah for \$\$\$\$\$ on June 18, 2000, and states that the airplane was purchased solely to fly between his various cattle ranches in STATE 1, Utah, STATE 2, and STATE 3 to check livestock and water conditions. He further confirms that the airplane is based in CITY, Utah.

4. The Petitioner contends that he purchased the airplane tax-free in accordance with the exemption from sales and use tax provided under UCA §59-12-104 (20)(a) for “tangible personal property used or consumed primarily and directly in farming operations” (“agricultural exemption”). The Petitioner specifically contends that the airplane qualifies as an “implement of husbandry” exempt from registration under UCA §41-1a-202(2)(c) or §41-22-9 and, as such, may be purchased tax-free under the agricultural exemption. Although the Petitioner admits that the airplane is titled by the federal government because federal law so requires, he states that the airplane is not registered with the State of Utah.

5. The Division does not contest that the airplane is used primarily and directly in farming operations. Instead, the Division asserts that the airplane is an “aircraft,” as defined in UCA §72-10-102(4), and is required to be registered with the state. As such, the Division contends that the airplane qualifies as a “vehicle required to be registered with the state” that is specifically excluded from the agricultural exemption.

APPLICABLE LAW

I. The Utah Sale and Use Tax Act.

A. For a June 2000 transaction, Utah Code Ann. §59-12-103(1) provided that “[t]here is levied a tax on the purchaser for the amount paid or charged for the following: (a) retail sales of tangible personal property made within the state[.]”¹

B. For a June 2000 transaction, UCA §59-12-104(20)² provided an exemption from sales and use tax for certain sales of tangible personal property used or consumed primarily and directly in farming operations, as follows in pertinent part:

(a) sales of tangible personal property used or consumed primarily and directly in farming operations, . . . but not sales of:

. . . .

(iii) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;

. . . .

C. For purposes of the Sales and Use Tax Act and the agricultural exemption, UCA §59-12-102³ defined “vehicle,” in June 2000 as follows in pertinent part:

As used in this chapter,

(31) “Vehicle” means[:]

[1] any aircraft, as defined in Section 72-10-102;

[2] any vehicle, as defined in Section 41-1a-102;

[3] any off-highway vehicle, as defined in Section 41-22-2;

[4] and any vessel, as defined in Section 41-1a-102;

that is required to be titled, registered, or both.

. . . .

1 Although the statute was amended subsequent to the transaction at issue, the language quoted was in effect when the aircraft at issue was purchased in June 2000.

2 This section has been renumbered and amended since the June 2000 transaction date at issue.

3 The definition of “vehicle,” for purposes of the Sales and Use Tax Act, has been renumbered and amended since the June 2000 transaction date at issue.

II. The Utah Uniform Aeronautical Regulatory Act.

A. Section 59-12-102(31) provides that “vehicle,” as defined for purposes of sales tax, includes “aircraft,” which it itself defined in UCA §72-10-102. Section 72-10-102(4) defines “aircraft” to mean “any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.”

B. With limited exception, UCA §72-10-109 requires aircraft located in Utah to have a current Utah certificate of registration, as follows:

1) (a) A person may not operate, pilot, or navigate, or cause or authorize to be operated, piloted, or navigated within this state any civil aircraft located in this state unless the aircraft has a current certificate of registration issued by this state through the county in which the aircraft is located.

(b) This restriction does not apply to aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of the registered aircraft or to a non-passenger-carrying flight solely for inspection or test purposes authorized by the Federal Aviation Administration to be made without the certificate of registration.

(2) Aircraft assessed by the State Tax Commission are exempt from the state registration requirement under Subsection (1).

DISCUSSION AND CONCLUSIONS OF LAW

At issue in this appeal is whether the airplane purchased by the Petitioner in June 2000 qualifies for the agricultural exemption from sales and use tax, as provided in Section 59-12-104(20). The evidence and testimony indicate that the airplane was purchased in Utah and has been used to fly among the Petitioner’s ranching properties in Utah and other surrounding states. Since its purchase, the Petitioner has “based” the airplane in Utah, from which it is flown to his other ranching properties. Furthermore, the parties agree that the airplane is used primarily and directly for the

Petitioner's ranching operations.

Subsection 59-12-104(20)(a)(iii) specifically provides that an item is excluded from the agricultural exemption if it is a "vehicle required to be registered by the laws of this state." The exemption and any exclusion from it are found in the Utah Sales and Use Tax Act, which also provides, in Section 59-12-102(31), a definition of "vehicle" with which to interpret and apply the exemption and its exclusions. The Petitioner, however, argues that other definitions of "vehicle" are located in other titles of the Utah Code and should be applied to interpret the Section 59-12-104(31) agricultural exemption instead of the definition of "vehicle" that is provided in the same chapter of the Utah Sales and Use Tax Act. The Commission disagrees.

Each statute at issue that contains definitions begins with a statement to the effect that the following definitions apply "[a]s used in this chapter." Because the Section 59-12-102(31) definition of "vehicle" appears in the same chapter of Utah Code as the Section 59-12-104(20) agricultural exemption and its exclusions, the Commission must apply the definition of "vehicle" as found in Section 59-12-102(31) to determine if the airplane is a vehicle whose sale is excluded from the agricultural exemption. For these reasons, the transaction at issue does not qualify for the agricultural exemption if the airplane: I) is a vehicle, as defined by Section 59-12-102(31); and II) is required to be registered by the laws of this state.

I. Is the airplane a "vehicle," as defined in Section 59-12-102?

For purposes of the agricultural exemption and its exclusions, Section 59-12-102(31) defines an item to be a "vehicle" if it satisfies one of four specific terms defined elsewhere in the

Utah Code and “is required to be titled, registered, or both.” Accordingly, the airplane at issue is a “vehicle” for purposes of the agricultural exemption and its exclusion if: A) it satisfies any one of the four specific definitions as found elsewhere in Utah law; and B) it is required to be titled, registered, or both.

A. Does the airplane meet any one of the four specific definitions? For the airplane to qualify as a “vehicle” under Section 59-12-102(31), it must first qualify as one of the following: 1) any aircraft, as defined in Section 72-10-102; 2) any vehicle, as defined in Section 41-1a-102; 3) any off-highway vehicle, as defined in Section 41-22-2; or 4) any vessel, as defined in Section 41-1a-102. If the airplane meets any one of these four definitions, it meets the first of two requirements necessary to be a “vehicle” for purposes of the agricultural exemption and its exclusions.

The first of the four definitions is “any aircraft, as defined in Section 72-10-102.” Section 72-10-102(4) defines “aircraft” as “any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.” The Petitioner admits that the airplane at issue is used to fly to various areas involved in his cattle ranching operation. Because the airplane at issue is a contrivance used for flight in the air, it qualifies as an “aircraft,” as defined in Section 72-10-102. As such, the airplane meets the first requirement to be a “vehicle,” as defined in Section 59-12-102(31), regardless of whether the airplane satisfies the other three specific definitions.

B. Is the airplane required to be titled, registered, or both? The second requirement that must be met before the airplane is a “vehicle” for purposes of the agricultural exemption and its exclusions is that it must be required to be titled, registered, or both. The

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Petitioner admits that he was required to title his aircraft through the federal government.

Accordingly, the aircraft at issue also meets the second requirement necessary to be a “vehicle” as defined in Section 59-12-102(31) and, thus, for purposes of the agricultural exemption and its exclusions.

Furthermore, although the Petitioner has not registered his aircraft with the State of Utah, Section 72-10-109 requires an aircraft located in Utah to be registered before it may be operated, except in two specific instances: 1) if the aircraft is licensed in a foreign country; or 2) if the aircraft is assessed for property tax purposes by the State Tax Commission instead of the assessor in the county in which the plane is located. Not only does the evidence and testimony show that the aircraft is located in Utah and has been based in Utah since its purchase in June 2000, it also shows that the aircraft is routinely operated and flown for purposes of the Petitioner’s ranching operations. In addition, neither party has shown that the aircraft is licensed in a foreign country or that the State Tax Commission assesses the aircraft for property tax purposes.⁴ Given these circumstances, the aircraft at issue is required to be registered with the State of Utah. The fact that the Petitioner has neglected to register his aircraft with Utah does not negate the statutory requirement that it be registered.

As the aircraft is not only required to be titled (by the federal government) but

4 UCA §59-2-201(1)(c) provides that the Utah State Tax Commission has the duty to assess “all operating property of an airline, air charter service, and air contract service.” An airplane owned by any other entity is assessed by the county assessor in accordance with UCA §59-2-301, which provides that “[t]he county assessor shall assess all property located within the county which is not required by law to be assessed by the commission.

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also required to be registered (with the State of Utah), the airplane meets the second requirement to qualify as a “vehicle” for purposes of the agricultural exemption and its exclusions.

Accordingly, both requirements necessary for the airplane to be considered a “vehicle” for purposes of Section 59-12-102(31) and the agricultural exemption and its exclusions are met.

For these reasons, the Commission finds the airplane at issue to be a “vehicle” for purposes of the agricultural exemption and its exclusions, as provided in Section 59-12-104(20).

II. Is the airplane required to be registered with the state? To be excluded from the agricultural exemption, the airplane would not only have to satisfy the definition of “vehicle,” as defined in Section 59-12-104(31), but it would also have to be required to be registered with the state. As discussed earlier, Utah law requires the airplane at issue to be registered with the State of Utah, even though the Petitioner has neglected to do so in the past. Nor does the Utah uniform Aeronautical Regulatory Act provide an exemption for aircraft used for agricultural purposes.

The Commission acknowledges that the Petitioner believes the airplane is an “implement of husbandry” that is not required to be registered either under Section 41-1a-202(2)(c), which exempts an “implement of husbandry” from registration, or Sections 41-1a-202(2)(k) and 41-22-9(5), which exempt an “off-highway implement of husbandry” from registration. However, the Commission does not agree.

For purposes of exemption from registration, UCA §41-1a-102(23) defines “implement of husbandry” to mean “every **vehicle** . . . used exclusively for an agricultural

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operation and only incidentally operated or moved upon the highways” (emphasis added).

However, “vehicle,” for purposes of Title 41 is defined differently than “vehicle” is defined for purposes of Title 59 and its agricultural exemption from sales tax. As a result, if the airplane is not a “vehicle,” as defined for purposes of Section 41-1a-102(23), then it cannot qualify as an “implement of husbandry” that is exempt from registration.

Under Section 41-1a-102(66), “vehicle” is defined to include “a motor vehicle, trailer, semitrailer, off-highway vehicle, manufactured home, and mobile home.” An airplane is not a trailer, semitrailer, manufactured home or mobile home, either in the usual sense of these words or as they are defined in Section 41-1a-102. In addition, because the airplane is not “intended **primarily** for use and operation on the highways” (emphasis added), it is not a “motor vehicle” as defined in Section 41-1a-102(32).

“Off-highway vehicle” is defined in UCA §41-22-2(11) to include snowmobiles, motorcycles, all-terrain type I vehicles, and all-terrain type II vehicles. The Petitioner agrees that an airplane is not a snowmobile, motorcycle, or an all-terrain type I vehicle. The Petitioner argues, however, that an airplane meets the Section 41-22-2(3) definition of an “all-terrain type II vehicle,” which includes motor vehicles “designed for or capable of travel over unimproved terrain.” The Commission does not believe that because it can “fly” over unimproved terrain, a motor vehicle is designed for or capable of travel “over” unimproved terrain. Furthermore, an airplane cannot traverse all terrains in the way that the other motor vehicles described in Chapter 22 of Title 41 are capable of doing. For these reasons, the Commission does not believe that the

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Legislature intended the definition of “all-terrain Type II vehicle” to include an airplane. For these reasons, the Commission does not consider an airplane to be a “vehicle,” as defined in Title 41 and eligible for exemption from registration as an “implement of husbandry.”

Furthermore, the definition of “off-highway implement of husbandry” does not include an “all-terrain Type II vehicle.” Accordingly, even if the definition of “all-terrain Type II vehicle” were to include an airplane, the airplane could not qualify as an “off-highway implement of husbandry” eligible for exemption from registration.

For these reasons, the Commission finds that the airplane at issue is required to be registered with the State of Utah. Accordingly, both requirements are met for the airplane at issue to be excluded from the agricultural exemption provided under Section 59-12-104(20). For these reasons, the Commission finds that the transaction at issue, i.e., the June 2000 purchase of the airplane by the Petitioner, was for the purchase of a “vehicle required to be registered by the laws of this state” and, as such, is subject to Utah sales and use tax. For these reasons, the Division’s assessment of sales tax on the Petitioner’s purchase of the airplane is sustained, except that the assessment should reflect the actual \$\$\$\$\$ purchase price that the Petitioner paid for the airplane.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the audit assessment imposed by the Division and denies the Petitioner’s appeal, except that the assessment shall be revised to reflect a purchase price of \$\$\$\$\$ for the airplane at issue. It is so ordered.

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DATED this _____ day of _____, 2005.

Kerry R. Chapman
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

Notice of Appeal Rights: Failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty. 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.

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