

04-0537  
Audit  
Signed 09/26/2005

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Petitioner,	)	<b>AND FINAL DECISION</b>
	)	
v.	)	Appeal No. 04-0537
	)	Account No. #####
	)	
AUDITING DIVISION OF	)	
THE UTAH STATE TAX	)	Tax Type: Sales Tax
COMMISSION,	)	Tax Year: 01/01/03 – 01/31/03
	)	
Respondent.	)	Judge: Davis

---

**Presiding:**

G. Blaine Davis, Administrative Law Judge  
Marc B. Johnson, Commissioner

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE, Attorney at Law  
PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
RESPONDENT REPRESENTATIVE 2, Director, Auditing Division  
RESPONDENT REPRESENTATIVE 3, Director, Motor Vehicle  
Division  
RESPONDENT REPRESENTATIVE 4, from the Auditing Division  
RESPONDENT REPRESENTATIVE 5, from the Auditing Division  
RESPONDENT REPRESENTATIVE 6, from the Auditing Division  
RESPONDENT REPRESENTATIVE 7, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 10, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is sales tax.
2. The period in question is the fourth quarter of 2002.
3. On or about November 25, 2002, Petitioner purchased a 1975 Cessna Airplane from another individual, paying a price of \$\$\$\$\$ for the airplane.
4. Petitioner licensed and registered the airplane with the State of Utah, but did not pay sales tax on the purchase price of the airplane.
5. At the time of the purchase of the airplane, the counties throughout the state did not have a uniform policy on the collection of sales tax at the time the airplane was registered. However, in 2003, an audit procedure was carried out by the Utah State Tax Commission to attempt to audit the new airplane registrations for which sales tax had not been received, to enforce the law requiring payment of sales tax.
6. A letter was mailed to Petitioner on or about October 17, 2003, requesting information regarding the possible payment of sales tax. After other communications between Petitioner and the Tax Commission, it was determined that Petitioner had purchased an airplane in November 2002, but had not paid sales tax thereon. Accordingly, Respondent imposed a sales tax assessment upon Petitioner's purchase of the airplane. The sales tax assessment was in an amount of \$\$\$\$\$.
7. Petitioner has timely appealed that assessment, which is at issue in this proceeding.
8. During the audit program carried out by Respondent to audit airplane sales on

which sales tax had not been paid, letters were sent to all individuals who had registered an aircraft in Utah between January of 2000 and December of 2002. Respondent has sent between 900 – 1,000 audit inquiry letters, and has collected more than \$\$\$\$\$ in sales tax as a result of this project. The majority of individuals to whom letters were sent have responded to those letters, and have complied with the sales tax law.

9. Petitioner called as a witness, WITNESS 1, who was formerly an aircraft assessor for Salt Lake County between July 1995 and September 2002. WITNESS 1 testified that he never assessed sales tax on any person-to-person sales when the airplanes were registered. However, it is noted that WITNESS 1 was not employed by Salt Lake County at the time of the purchase of the aircraft, was a personal friend of Petitioner, and in fact, helped Petitioner in the purchase of this airplane.

10. WITNESS 1 also testified that he attended a meeting with the State Tax Commission in approximately the spring of 2002, wherein sales tax on person-to-person aircraft sales was discussed. He said that some county assessors were reluctant to enforce the sales tax requirements, but he does not remember the names of any individuals at the Tax Commission who may have said that sales tax should not have been enforced, and he did not have anything in writing from the Tax Commission indicating that sales tax should not be collected.

11. WITNESS 2 was also called as a witness for Petitioner. WITNESS 2 is the current aircraft appraiser and tax assessor for Salt Lake County, and testified that he is now enforcing sales tax on person-to-person sales of aircraft. He represented that he gives the purchasers a form to

fill out and send to the Tax Commission. This procedure started on January 1, 2004 and sales tax has consistently been collected since that time. However, prior to January 1, 2004, purchasers of person-to-person aircraft sales were not actively pursued for the sales tax, but there is now a mechanism to collect the sales tax on all aircraft purchases.

12. Petitioner testified that he purchased the aircraft at issue at the ( X ), and registered the aircraft with the FAA in CITY, STATE. He was not informed about sales tax on the airplane until 11 months after his purchase of the plane.

13. RESPONDENT REPRESENTATIVE 3, Director of the Motor Vehicle Division for the Utah State Tax Commission, testified that he personally had a meeting with county assessors in June of 2002 and represented that it was his understanding that sales tax was required to be paid on the purchases of aircraft at the time they were registered. RESPONDENT REPRESENTATIVE 3 was instrumental in working out and deploying a system to collect sales tax on all aircraft sales, because some counties were collecting the tax, while others were not collecting the tax. He represented that he became the Director of the Motor Vehicle Division in November of 2001, and any meeting with Tax Commission personnel were prior to his becoming the Director. He therefore stated that any meeting with WITNESS 1 must have been in 2000 or 2001, and was not held in 2002.

14. RESPONDENT REPRESENTATIVE 5, Compliance Manager in the Auditing Division, testified that the aircraft sales tax project was run by him, and that packets were sent to all individuals who had registered aircraft in Utah from January 2000 through 2002. Those packets

were sent out beginning in October 2003.

APPLICABLE LAW

Utah Code Ann. §59-12-103 provides in relevant part as follows:

(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 this state;

Utah Code Ann. §59-12-107(4) (on the date at issue in this proceeding) provided as

follows:

(4) 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. The commission shall collect the tax when the vehicle is titled or registered.

Utah Code Ann. §59-12-102(40) (as of the date of the transaction herein) stated in

relevant part:

"Vehicle" means any aircraft . . . that is required to be titled, registered or both.

Utah Code Ann. §72-10-109(1)(a), effective as of the time at issue in this proceeding,

stated as follows:

"A person may not operate . . . 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."

DISCUSSION AND CONCLUSIONS OF LAW

The statutes of this state clearly require an imposition of sales tax upon the purchase of an airplane in this state that is subject to registration. Petitioner made such a purchase of an

airplane from a private individual, and the statutes of the state require him to pay the sales tax if the vehicle is subject to titling or registration under the laws of this state. The statute also requires the State Tax Commission to collect that tax at the time the vehicle is titled or registered.

Petitioner does not challenge the legal requirements relating to sales tax. It has been acknowledged by Petitioner that the statutes require the imposition and collection of sales tax upon purchases of aircraft subject to titling and registration, and it has also been acknowledged that the purchase of the aircraft at issue is one of those upon which the statutes would impose sales tax. Instead, Petitioner believes that there has been a non-uniform, unequal, and discriminatory enforcement of those statutes, and therefore he should not be required to pay the sales tax.

In this matter, at the time the airplane was purchased, there was not a standard uniform procedure in all of the counties for the collection of sales tax upon person-to-person acquisitions of airplanes. However, it is clear that there has been a uniform attempt to impose and collect the sales tax upon all airplane purchases which have been acquired in a manner similar to the acquisition of the subject airplane. The Utah State Tax Commission Motor Vehicle Division entered into an enforcement project to collect sales tax on all airplane registrations between January 2000 and December 2002. Most of the individuals who acquired an airplane from another individual during that time period have come into compliance with the law and have paid the sales tax on such airplanes. Petitioner is one of those persons who is similarly situated to others upon whom enforcement has been attempted and completed. Petitioner has not been singled out, nor has there been any discriminatory treatment of him.

While the collection of the sales tax was delayed upon some individuals, that delay was caused by a lack of understanding among some county assessors who did not require collection of the sales tax at the time the airplanes were registered. However, the collection program entered into by the Auditing Division has attempted to ensure that all purchasers of airplanes have been treated in a similar, uniform and equal manner. The evidence does not support the claim that Petitioner has been treated in a discriminatory manner. Therefore, there is no merit to the contentions of Petitioner.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the statutes of the State of Utah clearly impose tax upon Petitioner's acquisition of the airplane at issue, and that there has been no discriminatory treatment of Petitioner in the assessment and collection efforts which have been made to collect the tax against Petitioner. Therefore, the Petition for Redetermination is denied, and the assessment of tax made by the Auditing Division is hereby sustained. It is so ordered.

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

---

G. Blaine Davis  
Administrative Law Judge

Appeal No. 04-0537

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 and Payment Requirement:** 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. 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.

GBD/ssw/04-0537.fof