

04-1062
Audit
Signed 06/14/2005

BEFORE THE UTAH STATE TAX COMMISSION

| | | |
|----------------------|---|----------------------------|
| PETITIONER, |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS OF LAW, |
| Petitioner, |) | AND FINAL DECISION |
| |) | |
| v. |) | Appeal No. 04-1062 |
| |) | Account No. ##### |
| |) | |
| AUDITING DIVISION OF |) | |
| THE UTAH STATE TAX |) | Tax Type: Sales Tax |
| COMMISSION, |) | Tax Year: 2001 |
| |) | |
| Respondent. |) | Judge: Davis |

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from the Auditing Division
RESPONDENT REPRESENTATIVE 3, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 14, 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 July 2001.
3. On or about July 27, 2001, Petitioner purchased an ATV four-wheel vehicle from

COMPANY for a purchase price of \$\$\$\$\$. At the time of purchase, Petitioner submitted an Exemption Certificate as an agricultural producer. Based upon that certificate, Petitioner did not pay sales tax upon the purchase of the vehicle.

4. On July 27, 2004, Respondent sent to Petitioner a Statutory Notice of an assessment for sales and use tax on the purchase of the ATV, together with interest at the statutory rate. No penalty was imposed upon the purchase or the failure to pay the sales tax.

5. When Petitioner purchased the vehicle, he was required to have a sticker for the vehicle and he did receive a sticker from the dealer which stated that it was "an implement of husbandry". Petitioner did not register the vehicle as a regular recreational vehicle.

6. Petitioner owns property in CITY, Utah, and formerly raised cattle and hay on the property. However, Petitioner sold all of his cattle in the year 2000. He represented that he leases the agricultural property to an individual for a payment of \$\$\$\$\$ per month. However, the individual did not pay him any rent during the years 2000, 2001, 2002, or 2003. In September 2004, the individual filed a Chapter 7 Bankruptcy, but Petitioner was not listed on that bankruptcy as a creditor. The individual has allegedly made payments during the year 2005.

7. On his individual income tax returns, Petitioner did not show any farm income or expenses for the years 2000, 2001, 2002, and 2003. He likewise did not file a Schedule F with his income tax return. Petitioner's income tax return lists his occupation as vending machines and real estate.

8. Petitioner acknowledges using his ATV for recreational purposes, although it was not registered in the State of Utah for such use.

9. Petitioner presented a letter from the lessee of the land, representing that he has been leasing the land since 1995 and has been raising horses, beef, and game birds on the property.

10. Petitioner represented that he uses the ATV on his property to install fences, maintain broken fences, haul off trees growing along the ditches, haul off garbage blown in from the neighbor's property, spraying various wild vegetation, and using it to help him irrigate the property and make any repairs.

11. The tenant or lessee of the property has not executed a written lease with Petitioner, but instead has just made verbal representations to Petitioner that he would make the required payments. Prior to the year 2002, and during the times at issue in this proceeding, Petitioner had not received any payments of any kind from the tenant.

APPLICABLE LAW

An exemption from sales tax is provided for certain purchases of personal property used in farming at Utah Code Sec. 59-12-104(20) as follows:

(a)(i) sales of tangible personal property used or consumed primarily and directly in farming operations, including sales of irrigation equipment and supplies used for agricultural production purposes, whether or not they become part of real estate and whether or not installed by farmer, contractor, or subcontractor, but not sales of:

(A) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools and maintenance and janitorial equipment and supplies;

(B) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or

- (C) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put; or
- (ii) sales of parts used in the repairs or renovations of tangible personal property if the tangible personal property is exempt under Subsection (20(a)); or
- (b) sales of hay;

Utah Administrative Rule R865-19S-49(c) provides the rule for administering that sales tax exemption and states as follows:

The sale and use tax exemption for sale of tangible personal property used or consumed primarily and directly in farming operations applies only to commercial farming operations, as evidenced by the filing of a federal Farm Income and Expenses Statement (Schedule F) or other similar evidence that the farm is operated as a commercial venture.

DISCUSSION

Petitioner does own farming property, but during the year he purchased the ATV he did not personally farm the property. Instead, it was leased to a tenant who was carrying on agricultural activities on the property. In this capacity, Petitioner was similar to a landlord who was not himself actively engaged in commercial farming operations. Further, Petitioner did not file a federal farm income and expense statement (Schedule F) with his federal or state individual income tax returns, and he did not submit any other similar evidence that the farm is operated as a commercial venture. Therefore, even if Petitioner was using the ATV in maintaining the property, he was not personally involved in a commercial farming operation.

In addition, Petitioner acknowledged that he had used the ATV for recreational purposes in locations other than his farm. When Petitioner used his vehicle for recreational purposes, it was then required to be registered. Utah Code Ann. §59-12-104(20) specifically denies

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the exemption to "any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;". Accordingly, even if Petitioner was deemed to be involved in a commercial farming operation, the vehicle was required to be registered because it was used for recreational purposes. Therefore, the vehicle would have lost its agricultural exemption because it was required to be registered. The Commission finds that the purchase of the vehicle was not exempt from taxation and was subject to taxation by the statute.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the purchase of the ATV by Petitioner in 2001 was not exempt from taxation, but was subject to sales tax. Therefore, the Commission sustains the audit of Respondent, and denies the Petition for Redetermination filed by Petitioner. It is so ordered.

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

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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.

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