

04-1112  
Refund Request  
Signed 06/01/2005

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.    04-1112
	)	
TAXPAYER SERVICES DIVISION	)	
OF THE UTAH STATE TAX	)	Tax Type:    Sales Tax – Motor Vehicle
COMMISSION,	)	
	)	Judge:        Davis
Respondent.	)	

---

**Presiding:**

G. Blaine Davis, Administrative Law Judge  
Palmer DePaulis, Commissioner

**Appearances:**

For Petitioner:    PETITIONER  
For Respondent:    RESPONDENT REPRESENTATIVE 1, Assistant Attorney  
                            General  
                            RESPONDENT REPRESENTATIVE 2, from the Taxpayer  
                            Services Division  
                            RESPONDENT REPRESENTATIVE 3, from the Taxpayer  
                            Services Division  
                            RESPONDENT REPRESENTATIVE 4, from the Taxpayer  
                            Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 13, 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 2003.

3. Petitioner is a resident of the State of Utah and has lived here for at least three or four years.

4. On October 25, 2003, Petitioner purchased a 2002 Toyota Highlander from COMPANY in CITY, Utah.

5. The Utah automobile title was issued to Petitioner on November 17, 2003, and it listed Petitioner as the owner of the automobile. Petitioner also licensed and registered the vehicle in her own name.

6. At the time she purchased the automobile, Petitioner paid sales tax on the vehicle in an amount of approximately \$\$\$\$\$.

7. At the time Petitioner purchased the vehicle, she testified that she desired to send it to her father who remained in COUNTRY. However, she could not afford to pay the shipping on the vehicle, and it would not clear U.S. Customs until there was no longer a lien on the vehicle. Therefore, she continued to work and try to obtain the money to clear the title and pay the shipping fees from CITY to COUNTRY.

8. In May, 2004, Petitioner was able to clear the title and had sufficient funds to send the vehicle to her father. She then drove the vehicle to CITY and shipped the vehicle to COUNTRY. The application for permission to ship the vehicle was filed on May 7, 2004. She dropped off the vehicle on May 10, 2004, and the vehicle left the county on May 17, 2004.

9. From the time Petitioner purchased the vehicle in October 2003, until she delivered it to be shipped on May 10, 2004, she continued to drive and use the vehicle in Utah for her personal use for approximately seven or eight months.

10. The vehicle was purchased by Petitioner in her own name, and was not purchased by her as an agent for her father. The vehicle was also not purchased by her father.

11. When the vehicle arrived in COUNTRY, Petitioner was required to pay additional taxes of approximately \$\$\$\$ for the vehicle to be permitted to enter the country and be registered as a vehicle therein. A portion of those taxes was sales tax to that country.

12. Because Petitioner has been required to pay sales tax on the vehicle two different times, she feels that the sales tax paid in Utah should be refunded to her.

#### APPLICABLE LAW

Utah Code Ann. §59-12-103 imposes a tax upon amounts paid or charged for all retail sales of tangible personal property made within this state.

Utah Code Ann. §59-12-104(9) provides an exemption from sales tax for the following transactions:

"(9) Sales of vehicles of a type required to be registered under the motor vehicle laws of this state which are made to bona fide non-residents of this state and are not afterward registered or used in this state except as necessary to transport them to the borders of this state."

#### DISCUSSION

Petitioner has acknowledged that she was a resident of this state at the time the vehicle was purchased, that she purchased the vehicle, that she voluntarily paid sales tax at the time of purchase, and that the purchase was made in her own individual capacity and not as an agent acting for her father or anyone else. Although Petitioner suggested that she meets the provisions of Utah Code Ann. §59-12-104(9), except for the non-resident requirement, the statute is clear that the exemption is limited to persons who are not residents of the State of Utah. Further, even if Petitioner had been a non-resident at the time of the purchase, the vehicle was not immediately transported to the borders of this state. Therefore, the sale would have been taxable, even if Petitioner had been a non-resident.

Although the Commission is sympathetic to the additional costs that were incurred by Petitioner when the vehicle reached COUNTRY, the Utah taxing statute clearly imposes the sales tax on the subject transaction, and the Petitioner does not qualify for the statutory exemption for motor vehicles purchased by non-residents which are then immediately transported to the borders of the state.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission determines that the sale of the subject vehicle to Petitioner was subject to sales tax, and that the tax was paid by Petitioner in accordance with the requirements of Utah law. The Commission further finds that the exemption for motor vehicles purchased by non-residents of the State of Utah which are immediately transported to the borders of the State does not apply to Petitioner. Therefore, Petitioner's request for a refund is hereby denied. 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

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

Appeal No. 04-1112

**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/04-1112.fof*