

04-1214  
Refund Request  
Signed 06/14/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Petitioner,	)	<b>AND FINAL DECISION</b>
	)	
v.	)	Appeal No.    04-1214
	)	
TAXPAYER SERVICES DIVISION OF	)	
THE UTAH STATE TAX	)	Tax Type:    Sales Tax
COMMISSION,	)	Tax Year:    2004
	)	
Respondent.	)	Judge:        Davis

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**Presiding:**

G. Blaine Davis, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 11, 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 2004.
3. On July 26, 2004, Petitioner purchased a harp from COMPANY in CITY 1 Utah.

The harp was delivered to Petitioner in CITY 1 Utah, and was immediately taken by Petitioner to CITY 2, STATE 1 where Petitioner resides. The harp was not transported to CITY 2, STATE 1 by way of common carrier.

4. When Petitioner purchased the harp, sales tax was added to the invoice in an amount of \$\$\$\$\$, and Petitioner has now requested a refund of that sales tax. Respondent has denied the refund, and Petitioner has timely appealed.

5. Petitioner represented that in early July of 2004, prior to the purchase of the harp, he called the Tax Commission and his call was directed to the sales tax section of the commission. He represented that a young lady answered the telephone, and he inquired whether Utah has a reciprocity arrangement to allow STATE 1 residents to be exempt from sales tax when making purchases within Utah. He represented that the State of STATE 2 has such a reciprocity agreement with the State of STATE 1. He further represented that if his wife decided to make the purchase of the harp, he desired to avoid paying the Utah sales tax, but did not want to have the instrument shipped by common carrier because of the delay and because of its substantial value. He stated that the lady put him on hold for between one and three minutes, and then returned to say that although the merchant would be required to collect the tax, he could get it refunded by sending a copy of the invoice and proof of STATE 1 citizenship, along with a letter requesting a refund of the sales tax. This would have to occur after the harp was actually in STATE 1.

APPLICABLE LAW

Utah Code Ann. §59-12-103 provides that, "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 Administrative Code Rule R865-19S-44 provides as follows:

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. **When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.**

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;
2. such movement must be an essential and not an incidental part of the sale;
3. **the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;**

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer. (Emphasis added.)

#### DISCUSSION

In this matter, it is clear that the statute, §59-12-103, imposes a tax upon the sale of the harp which occurred in Utah. It is also clear that under Rule R865-19S-44, the sale of the harp did not qualify as a sale in interstate commerce.

The only possible basis for granting the refund requested by the Petitioner would be

based upon the representations of Petitioner that he received erroneous information from the Tax Commission regarding the possible refund of the taxes. However, the Commission is bound to follow the statute and the rule, just as is Petitioner, and just as was COMPANY when they collected the sales tax from him. In fact, even assuming that Petitioner has related the conversation with a tax commission employee exactly as it took place, it is clear that he was advised that the sales tax would be imposed upon him upon the purchase of the musical instrument, and that he knew that COMPANY would be required to collect the tax.

In this matter, Petitioner argues vigorously that it is unfair for him to rely upon erroneous advice from a tax commission employee, and then to suffer adverse consequences from his reliance upon such erroneous advice. However, while the Commission does not doubt the honesty or integrity of Petitioner, the Petitioner did not remember the name of the employee to whom he spoke, nor did he seek any official guidance by way of a private letter ruling or other written assurance that such a purchase would not be subject to sales tax, or that he could get a refund of any such sales tax paid by him. Further, assuming the facts to be exactly as related by Petitioner, it still does not provide a basis for refunding the sales tax to him based upon a defense of reliance upon erroneous advise. Although the employees of Respondent make a diligent effort to be of service in trying to assist taxpayers, without knowing the name or position of the person who may have made such statements and representations to Petitioner, it is unknown whether such a person had the training or knowledge to be able to give reliable advice on such a topic. Further, if such an employee does not have the proper authority to make commitments on behalf of the Commission, then such advice is

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not binding upon the taxpayer or the Tax Commission. (See State Tax Commission of Utah v. Katsis, 90 Utah 406, 62 P.2d 120 (1936 Utah).

DECISION AND ORDER

Based upon the foregoing, the Commission determines that Petitioner is not entitled to a refund of the sales taxes paid on the purchase of the harp. Accordingly, the request for refund and the Petition for Redetermination are 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

**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

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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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