

05-0027  
Audit  
Signed 10/17/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No.    05-0027
v.	)	
	)	Account No.  #####
AUDITING DIVISION OF	)	Tax Type:    Sales Tax
THE UTAH STATE TAX	)	Audit Year:  2002
COMMISSION,	)	
	)	Judge:        Chapman
Respondent.	)	

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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on October 6, 2005.

In 2002, the Petitioner purchased two all-terrain vehicles (“ATVs”) for use on his farm in COUNTY at different times. PETITIONER proffers that upon registering the first of these ATVs at the Division of Motor Vehicle (“DMV”) and telling the clerk that the ATV would only be used on his farm in COUNTY, he was allowed to register the ATV as an “instrument of husbandry” without paying sales tax on it. When registering the subsequently purchased ATV, however, the DMV clerk told him that he would have to pay sales tax to register the ATV, regardless of how the

ATV was used. PETITIONER proffered that he paid the sales tax without asking to speak to a supervisor because he was on his lunch hour, but spoke to the DMV clerk's supervisor the next day to clarify the situation. PETITIONER states that the supervisor told him the clerk had been misinformed, that sales tax was not due if it was to be used for agricultural purposes, and instructed him to request a refund from Taxpayer Services Division. Upon submitting a written refund request to Taxpayer Services Division, PETITIONER was issued a refund of the taxes collected by DMV.

Subsequently, however, Auditing Division reviewed Taxpayer Services Division's refund action and contacted PETITIONER. PETITIONER explained the circumstances involving his purchase of and the sales tax issue involving the second ATV, as well as his experience involving the first ATV. Auditing Division then assessed PETITIONER sales tax and interest not only on the second ATV for which Taxpayer Services Division had issued a refund, but also on the first ATV on which sales tax had never been collected.

PETITIONER proffers that he allows his family to keep horses and cows on the property where the ATVs are used, but that he does not charge his family rent for their use of the property. Furthermore, PETITIONER does not treat the farm as a business operation for income tax reporting purposes. PETITIONER proffers that the ATVs are used on the farm to check fences and other farm purposes, but admits that the farm is a "hobby" farm and not an income-generating business.

The Division proffers that neither of the ATVs at issue qualifies for the agricultural exemption because PETITIONER did not deduct farm related expenses for income tax purposes in

2002. The Division proffers a copy of the Petitioner's 2002 income tax return to show that he did not deduct expenses for the farm on which the vehicles are located.

PETITIONER states that he has appealed primarily to point out what he considers a change of policy that has occurred between the purchase of the first and second ATVs and what appears to be a difference of policy between the Commission's various divisions. PETITIONER also believes it is unfair to single him out for taxation because his neighbors who operate similar "hobby" farms have purchased ATVs tax-free without Auditing Division subsequently assessing them

Even should the Commission determine that he is liable for the sales tax, PETITIONER believes that the lack of consistency between the divisions has led to him incurring interest and registration fees that he otherwise would not have incurred. First, he asserts that had he been given the correct information upon registering the ATVs and if Taxpayer Services Division had not issued him a refund on the second ATV, he would have paid the tax upon registering both vehicles and would not have incurred interest liability. Furthermore, if the ATVs are not eligible for exemption as instruments of husbandry, he will re-register them for highway use and, had he known that he did not qualify for the exemption at the time of purchase, he would have registered them for highway use at that time. For these reasons, he asks the Commission to waive the interest associated with the assessment and to allow him to apply the "instrument of husbandry" registration fees he has already paid to whatever fees are required to re-register the ATVs for highway use.

Although no one from DMV or Taxpayer Services Division was present to explain the practices of these divisions and why Taxpayer Services Division refunded the sales tax for the

second ATV, Auditing Division asserts that it is not uncommon for Taxpayer Services Division to issue a refund upon the request of a taxpayer without investigating the answer, then referring the matter to Auditing Division to assess the situation. Auditing Division further states that it has not spoken to anyone from these other divisions concerning this issue in this matter, so it is not sure how this situation arose. Nevertheless, Auditing Division explains that it, and not the other divisions, is responsible for determining whether sales tax is due on a transaction.

APPLICABLE LAW

Utah law provides that a tax is imposed on the purchaser for amounts paid or charged for retail sales of tangible personal property made within the state. Utah Code Ann. §59-12-103(1)(a).

Utah law provides for a number of exemptions for sales that would otherwise be taxable. One such exemption is provided in UCA §59-12-104(19)<sup>1</sup>, which exempts from taxation certain “tangible personal property used or consumed primarily and directly in farming operations,” pertinent parts as follows:

(19) (a) (i) except as provided in Subsection (19)(b), sales of tangible personal property used or consumed primarily and directly in farming operations, . . .

(b) notwithstanding Subsection (19)(a), amounts paid or charged for the following tangible personal property are subject to the taxes imposed by this chapter:

(i) (A) subject to Subsection (19)(b)(i)(B), the following tangible personal property if the tangible personal property is used in a manner that is incidental to farming:

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<sup>1</sup> The statute has been renumbered since 2002 when the ATVs at issue were purchased. However, the portions of the statute relevant to the issue in this matter have not substantively changed.

- (I) machinery;
- (II) equipment;
- (III) materials; or
- (IV) supplies; and
- (B) tangible personal property that is considered to be used in a manner that is incidental to farming includes:
  - (I) hand tools; or
  - (II) maintenance and janitorial equipment and supplies;
  - .....
  - (iii) a vehicle required to be registered by the laws of this state during the period ending two years after the date of the vehicle's purchase;

In 2002, Utah Admin. Rule R865-19S-49 ("Rule 49") provided in pertinent part, as

follows:

.....  
C. The sales or use tax exemption for sales 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 Expense Statement (Schedule F) or other similar evidence that the farm is operated as a commercial venture.  
.....

Effective October 19, 2004, the Commission modified Utah Administrative Code

Rule, which now reads pertinent parts as follows:

- (A) (1) For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Section 162 or 212, Internal Revenue Code.
- (2) To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

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DISCUSSION

This matter concerns the sales tax exemption provided in Section 59-12-104(19) for tangible personal property used or consumed primarily and directly in farming operations. At issue is whether the Petitioner's two purchases of ATVs in 2002 qualify for the exemption. First, the Commission will consider the law that existed at the time of the purchases to determine if they are eligible for the exemption, given the testimony and evidence proffered at the Initial Hearing. Second, the Petitioner proffered testimony to suggest that various divisions may be inconsistent in their application of this exemption for ATVs that are registered at the DMV. Accordingly, should the Commission find the ATVs to be taxable, it will consider whether the circumstances described warrant an abatement or waiver of the tax and interest assessed by the Division and the registration fees the Petitioner has already incurred.

**Do the transactions qualify for exemption?** The Division argues that, under the current version of Rule 49, which became effective in 2004, a taxpayer must deduct farm related expenses during the year of purchase before a transaction may qualify for exemption. First, Rule 49(A)(1) provides that a taxpayer is engaged in "farming operations" if that person **may** deduct such expenses. Nevertheless, the Commission will not determine if evidence is available to show whether the Petitioner was eligible to deduct such expenses in 2002 because this revised rule, effective in 2004, does not apply to the transactions at issue.

The version of Rule 49 in effect at the time of transactions at issue provides in Subsection (C) that the filing of a federal Schedule F or some other similar evidence is sufficient

to show purchases are to be used or consumed on a “farming operation” and, as a result, may qualify for the exemption. The Petitioner did not file a Schedule F for the 2002 tax year. Nor did he provide other evidence that would show that the farm is a farming operation. In fact, the Petitioner’s statements indicate that he does not operate a farming operation on the property for which the ATVs were purchased to be used. For these reasons and based on the evidence and testimony proffered at the Initial Hearing, the Commission finds that the purchase of both ATVs at issue do not qualify for exemption and that the Division correctly assessed them as taxable.

**Do the divisions’ actions warrant waivers of tax, interest, or fees?** Regardless of the actions taken by the divisions, the Commission may not waive a tax that is legally due under these circumstances. Other than the Petitioner’s proffered testimony that his neighbors have purchased ATVs under similar circumstances without having to pay sale tax, the Commission has no information about these neighbors’ circumstances and whether or not they conduct “farming operations.” Furthermore, the Commission has received no testimony from the other divisions to determine if they have uniformly allowed ATVs to be registered tax-free as “instruments of husbandry” at the request of the owner without subsequent review and taxation of the transactions. For these reasons, the Commission finds no cause to waive a tax legally imposed by law under these circumstances.

The Division proffered no argument against the Commission waiving the interest or fees. The Commission is permitted to waive interest upon a showing of reasonable cause, in accordance with UCA §59-1-401(11). The Commission finds that the different treatment that the

Petitioner received from the three divisions involved in this matter resulted in the interest liability and is sufficient reasonable cause to waive the interest. Furthermore, based on the limited information available at the Initial Hearing, it appears that the Petitioner was given erroneous or incomplete information at various steps in his interactions with the various divisions that resulted in him registering the ATVs as “instruments of husbandry” instead of registering them for highway usage. Should the Petitioner decide to re-register the ATVs for highway usage within sixty (60) days of the issuance of this Order, the Commission orders DMV to allow those fees paid in 2002 to register the ATVs as instruments of husbandry to be applied to the fees required to re-register the ATVs for highway use.

#### DECISION AND ORDER

Based upon the foregoing, the Commission finds that the purchases of the ATVs at issue do not qualify for exemption from sales tax and, accordingly, are taxable. Furthermore, the Commission finds no cause to waive the sales tax that is due. However, the Commission finds sufficient cause to waive the interest imposed by the assessment. In addition, the Commission finds that should the Petitioner decide to re-register the ATVs at issue for highway usage within sixty (60) days of the issuance of this Order, the Commission orders the DMV to allow those fees paid in 2002 to register the ATVs as instruments of husbandry to be applied to the fees required to re-register the ATVs for highway use. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to



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this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

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

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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

Marc B. Johnson

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Commissioner

Commissioner

**Notice:** If a Formal Hearing is not requested as discussed above, 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.

*KRC/05-0027.int*