

05-0223
Audit
Signed 11/01/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-0223
)		
v.	)	Account No.	#####
)		
AUDITING DIVISION	)	Tax Type:	Sales Tax
OF THE UTAH STATE)		
TAX COMMISSION,	)	Audit Period:	2002
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on September 20, 2005 pursuant to the provisions of Utah Code Ann. §59-1-502.5.

The Petitioner, PETITIONER, is an automobile dealer. The Petitioner sold a 2000 Ford Expedition to PURCHASER 1 on or about August 21, 2002 and a 1996 Plymouth Neon to PURCHASER 2 on or about September 4, 2002. The Petitioner did not collect sales tax on the two transactions because the purchasers each completed a Nonresident Affidavit for Sales Tax Exemption, Tax Commission Form TC-583 (hereinafter referred to as "Nonresident Affidavit"), on which they each claimed to qualify for exemption because they were residents of the State of

STATE. Each purchaser indicated on the Nonresident Affidavits that he possessed a Utah driver's license at the time of the purchase. At some time after purchasing their respective vehicles, PURCHASER 2 and PURCHASER 1 each registered and paid sales tax on his vehicle in STATE and surrendered his Utah driver's license. The Petitioner contends that each of the purchasers were a bona fide resident of STATE at the time of purchase and, as a result, the transactions qualify for exemption from sales tax.

Should the Commission find either or both of the transactions subject to Utah tax, however, the Petitioner contends that he should not be liable for the tax because he believes the Nonresident Affidavit he had purchasers sign in 2002 was misleading. Although the Petitioner acknowledges that the "new" Nonresident Affidavit (revised in March 2000) provided by the Commission contains language explaining that possession of a Utah driver's license may disqualify a purchaser from the exemption, he states that the older affidavit he had continued to use did not contain such as clear a statement.

Auditing Division ("Division") proffers evidence that both purchasers signed a Nonresident Affidavit on which they listed their respective Utah driver's license numbers. Because each possessed a Utah driver's license at the time of purchase, the Division argues that both purchasers are disqualified from receiving the sales tax exemption at issue and that the Petitioner, as the dealer, should be liable for the tax.

APPLICABLE LAW

Utah Code Annotated §59-12-103(1) 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 the state”

Utah Code Annotated §59-12-104(9) provides an exemption from sales and use tax for “sales of vehicles of a type required to be registered under the motor vehicle laws of this state which are made to bona fide nonresidents of this state and are not afterwards registered or used in this state except as necessary to transport them to the borders of this state[.]”

Utah Admin. Rule 865-19S-98 (“Rule 98”) was adopted to provide guidelines concerning the exemption provided under Section 59-12-104(9) and provides in pertinent part:

...

(B) In order to qualify as a nonresident for the purpose of exempting vehicles from sales tax under Subsections 59-12-14(9) and 59-12-104(31), a person may not:

(1) be a resident of this state. The fact that a person leaves the state temporarily is not sufficient to terminate residency;

...

(7) declare residency in Utah to obtain privileges not ordinarily extended to nonresidents, such as attending school or placing children in school without paying nonresident tuition or fees, or maintaining a Utah driver’s license.

...

(G) A dealer of vehicles who accepts an incomplete affidavit, may be held liable for the appropriate tax, interest, and penalties.

(H) A dealer of vehicles who accepts an affidavit with information that the dealer knows or should have known is false, misleading, or inappropriate may be held liable for the appropriate tax, interest, and penalties.

DISCUSSION

In August and September of 2002, Petitioner sold vehicles to PURCHASER 1 and PURCHASER 2. In each of these transactions, Petitioner did not collect sales tax because each

purchaser completed and signed a Nonresident Affidavit on which they listed STATE addresses and because he had knowledge that the two purchasers were moving or had moved to STATE.

Two issues exist in this case. First, are the two transactions subject to Utah taxation? Second, if either or both of the transactions are subject to Utah tax, is the Petitioner, as the seller of the vehicles, liable for not collecting and remitting it to the Commission?

I. Transactions Subject to Utah Tax? In accordance with Section 59-12-104(9), each of the transactions at issue is subject to Utah tax unless the purchaser was a bona fide nonresident of Utah at the time of purchase and the vehicle was used in Utah only as necessary to transport it to Utah's borders. Section B.7. of Rule 98 specifically provides that a person is disqualified from the exemption if he or she "declare[s] residency in Utah to obtain privileges not ordinarily extended to nonresidents, such as . . . maintaining a Utah driver's license."

Respondent asserts that, in accordance with Rule 98(B)(7), mere possession of a Utah driver's license automatically disqualifies an individual from the exemption. The Commission believes that this approach runs the risk of narrowing the governing statute and should not be interpreted as an automatic disqualification. Although a person possessing a Utah driver's license is likely to be a Utah resident, a person may have already changed his or her domicile to another state, yet still maintain a Utah driver's license.¹ If so, that person may be a bona fide Utah nonresident at the time of the transaction and, as a result, may qualify for the

¹ For example, STATE Code §49-119(12) provides a person 90 days after becoming a resident of STATE to surrender his or her driver's license from another state and to obtain an STATE driver's license.

exemption. Accordingly, the Commission finds that possession of a Utah driver's license, while not dispositive in itself, creates a rebuttable presumption of Utah residency, which may be overcome by sufficient evidence that an individual was a "bona fide resident of another state."

Although the Petitioner first stated that the two purchasers at issue were moving to STATE after purchasing the vehicles, he proffered additional testimony and evidence in an attempt to show that each had relinquished his Utah domicile at the time of their respective purchases. The actual sales date for each of the vehicles is unknown and the Petitioner does not remember when they were actually sold.

With respect to the sale to PURCHASER 1, the only evidence proffered to rebut the presumption of Utah residency was a 'Carfax' report showing that the vehicle was registered and driven in STATE subsequent to the purchase. It is interesting to note that although the vehicle was registered in STATE on August 19, 2002, PURCHASER 1 did not sign the Utah Nonresident Affidavit until August 21, 2002, two days after registering the vehicle at issue in STATE. Without more information concerning the actual date of sale of the vehicle and PURCHASER 1's domicile as of the sale date, the Commission does not believe there is sufficient evidence to show that PURCHASER 1 was a bona fide resident of STATE as of the date he purchased the vehicle.

With respect to the sale to PURCHASER 2, the Petitioner asserted that PURCHASER 2, who is his son-in-law, had already accepted employment in STATE when he purchased the vehicle and, soon after purchasing the vehicle, purchased property in STATE.

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Although there is no information concerning the exact sale date, PURCHASER 2 signed the Nonresident Affidavit on September 4, 2002. The Petitioner also proffered testimony that within a week of PURCHASER 2 purchasing the vehicle, he himself helped move the PURCHASER'S and their possessions to STATE, either to an apartment or a hotel. He could not recall at the hearing exactly where he helped move them and, upon further questioning, stated that he might not have moved the PURCHASER'S possessions to STATE until October. Evidence was proffered to show that the vehicle sold to PURCHASER 2 was registered in and sales tax paid to STATE soon after the date on which the Nonresident Affidavit was signed. PURCHASER 2 provided another affidavit for purposes of the hearing in which he states that he only used the vehicle at issue to transport it and himself to STATE and that he had severed all ties with Utah at the time of purchase. He confirms that he purchased a home in October, but provides no details concerning his "place to stay" in STATE in the interim. PURCHASER 2 also gave an "approximate" date of purchase in his affidavit, not the exact date of purchase. Unfortunately, the Petitioner's testimony seems to indicate that the vehicle may have been used at least for a few days in Utah after PURCHASER 2 signed the affidavit. Were there definitive information concerning the date of sale and additional evidence concerning the date on which PURCHASER 2 first rented the hotel room in STATE, the Commission might be inclined to find differently. However, the Commission finds the testimony and evidence proffered at the Initial Hearing insufficient to prove that PURCHASER 2 was a bona fide resident of STATE on the date that the vehicle was purchased and that the vehicle was used in Utah only to transport it to the border.

The Commission believes that the evidence and testimony proffered at the Initial Hearing concerning both PURCHASER 2 and PURCHASER 1 is insufficient to rebut the presumption of Utah residency at the time of their respective purchases due to their possession of Utah driver's licenses. Although it may be possible that either or both of the purchasers were bona fide residents of STATE on their respective dates of purchase, the information is too incomplete and contradictory for the Commission to come to this conclusion. For these reasons, the Commission sustains the Division's conclusion that the transactions are taxable.

II. Is Petitioner Liable for the Tax? Sections G and H of Rule 98 provide that a dealer of vehicles may be held liable for taxes, interest and penalties for accepting either an incomplete affidavit or one which they either know or should have known contains false, misleading, or inappropriate information. The Division is not arguing that the Petitioner accepted incomplete affidavits from the two purchasers at issue. Instead, the Division argues that because the purchasers identified that they had Utah driver's licenses, the Petitioner should have known that the purchasers did not qualify for the exemption. As a result, the Division contends that the Petitioner is liable for the taxes assessed under Rule 98(H).

The Commission disagrees. The Commission acknowledges that the Nonresident Affidavit states that the holder of a Utah driver's license may not receive the exemption. However, as explained earlier, there will be instances where the opposite is true and the holder of a Utah driver's license qualifies for the exemption. Accordingly, the Commission will not hold a dealer liable for taxes not collected if the only information from which he knew or should have known the transaction to be taxable is the listing of a Utah driver's license.

In the instant case, the Petitioner stated that he had knowledge that both purchasers were moving or had moved to STATE and believed that they qualified for the exemption for these reasons. Given that the purchasers each listed an STATE address, that they each registered the vehicles in STATE, and that the Petitioner had personal knowledge that the purchasers were moving to or had moved to STATE when the vehicles were purchased, the Commission finds that it was reasonable for the Petitioner to believe that the transactions were exempt from taxation, even though the purchasers had Utah driver's licenses. Accordingly, the Commission finds that the Petitioner is not liable for sales tax on the two transactions at issue.

In summary, based on the evidence and testimony proffered at the Initial Hearing, the Commission finds that the two transactions at issue are taxable. However, the Commission also finds that the Petitioner is not liable for the tax because there is insufficient evidence and testimony proffered to show that he knew or should have known that the transactions were ineligible for the exemption.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that the Petitioner has not demonstrated that either purchaser qualified for the sales tax exemption. Nevertheless, the Commission finds that the Petitioner is not liable for the tax because he had sufficient information to reasonably believe the transactions to be exempt and because it has not been shown that he knew or should have known the transactions to be taxable. Accordingly, the Tax Commission grants the appeal and overturns the Division's assessment. It is so ordered.

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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 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.

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

R. Bruce Johnson

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Commission Chair

Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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