

05-0266
Audit
Signed 07/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 05-0266
v.)	
)	Account No. #####
AUDITING DIVISION OF)	Tax Type: Sales Tax
THE UTAH STATE TAX)	Audit Year: 2002
COMMISSION,)	
)	Judge: Chapman
Respondent.)	

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER (by telephone)

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from Auditing Division
RESPONDENT REPRESENTATIVE 3, from Auditing Division
RESPONDENT REPRESENTATIVE 4, 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 June 22, 2005.

On May 25, 2002, the Petitioner purchased a motor vehicle in Utah, but did not pay Utah sales tax on the transaction. The Petitioner claims that the transaction is exempt from taxation because he was a resident of a state other than Utah at the time of purchase and because the vehicle was never used for a business purpose in Utah. The Division, however, claims that the transaction is taxable because the Petitioner did not promptly remove the vehicle from Utah after its purchase,

asserting that the Petitioner worked and lived in Utah much of 2002 and 2003, during which time the motor vehicle at issue was often present in Utah.

APPLICABLE LAW

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

For sales that would otherwise be taxable, Utah law provides for a number of exemptions from sales tax. One such exemption is UCA §59-12-104(9), which provides an exemption 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[.]”

To help administer the exemption provided by Section 59-12-104(9), Utah Admin. Rule R865-19S-98 (“Rule 98”) was enacted and provides, as follows:

- B. In order to qualify as a nonresident for the purpose of exempting vehicles from sales tax under Subsections 59-12-104(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;
 2. be engaged in intrastate business within this state;
 3. maintain a vehicle with this state designated as the home state;
 4. except in the case of a tourist temporarily within this state, own, lease, or rent a residence or a place of business within this state, or occupy or permit to be occupied a Utah residence or place of business;
 5. except in the case of an employee who can clearly demonstrate that the use of the vehicle in this state is to commute to work from

another state, be engaged in a trade, profession, or occupation or accept gainful employment in this state;

6. allow the purchased vehicle to be kept or used by a resident of this state; or

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.

C. A nonresident owner of a vehicle described in Section 59-12-104(9) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

D. A nonresident owner of a vehicle described in Subsection 59-12-104(31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state does not exceed 14 days in any calendar year and is nonbusiness in nature.

DISCUSSION

It is uncontested that the Petitioner purchased a motor vehicle in Utah in May 2002.

Accordingly, the transaction is subject to Utah sales tax, in accordance with Section 59-12-103(1)(a), unless an exemption from taxation exists. Section 59-12-104(9) provides an exemption from taxation for motor vehicles purchased in Utah, but only if certain conditions are met, specifically: 1) the sale is made to a bona fide nonresidents of Utah; and 2) the vehicle is not afterwards registered or used in this state except as necessary to transport it to the Utah border.

Bona Fide Nonresident. The Division does not contest, for purposes of this matter, that PETITIONER was a bona fide nonresident of Utah during 2002, the year in which the vehicle was purchased. Accordingly, the Commission finds that the Petitioner meets the first criteria required for exemption.

Use of the Vehicle in Utah. The Division contends, however, that PETITIONER did not meet the second condition of the exemption statute because his use of the vehicle in Utah after purchasing it exceeded the “use necessary to transport it to the Utah border.” It is uncontested that the Petitioner worked periodically in Utah during 2002 and 2003, that the vehicle at issue was often present in Utah during the periods the Petitioner worked in Utah but was not used for a business purpose. There is no question that the vehicle was often present in Utah in 2002 and 2003 after its purchase and, as PETITIONER testifies, was used to transport the “fifth wheel” in which he lived while working in Utah. Accordingly, the use of the vehicle at issue in Utah after its purchase exceeded the use permitted by the exemption statute, i.e., the “use necessary to transport it to the Utah border.” Accordingly, the transaction at issue does not qualify for the exemption from taxation afforded by Section 59-12-104(9), and the tax assessed by the Division is correct.

Although it is clear from the statute alone that the transaction is taxable, the Commission believes that Sections (B)(5), (C), and (D) of Rule 98 also explain that the transaction at issue does not qualify for the exemption afforded by Section 59-12-104(9) under the circumstances present in this matter.

DECISION AND ORDER

Based upon the foregoing, the Commission denies the Petitioner’s appeal and sustains the Division’s audit assessment. 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.

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
Commissioner

Marc B. Johnson
Commissioner

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