

05-0307
Refund Request
Signed 04/21/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	FINDINGS OF FACT, CONCLUSIONS
Petitioner,)	OF LAW, AND FINAL DECISION
)	
v.)	Appeal No. 05-0307
)	
TAXPAYER SERVICES DIVISION)	Account No. #####
OF THE UTAH STATE)	Tax Type: Sales Tax Refund
TAX COMMISSION,)	
)	Judge: Chapman
Respondent.)	

Presiding:

R. Bruce Johnson, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Representative (by telephone)
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, from the Taxpayer Services Division
 RESPONDENT REPRESENTATIVE 3, from the Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing April 4, 2006. Although the Petitioner was afforded the opportunity to submit a post-hearing brief by April 14, 2006 to discuss the impact of the 2006 Legislature's Senate Bill 233 ("S.B. 233") on the matter, the Petitioner did not submit such a brief. Based upon the evidence and testimony presented at the hearing and the post-hearing briefs, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is sales and use tax.
2. On December 17, 2004, the PETITIONER requested the Taxpayer Services Division ("Division") to refund certain amounts of sales tax that had been collected and paid on transactions involving seven motor vehicles that it had repossessed.

3. The seven motor vehicles at issue were sold on conditional sales contracts by COMPANY, a motor vehicle dealership that went out of business prior to the PETITIONER repossessing the vehicles.

4. The PETITIONER was the third party financial institution associated with the conditional sales contracts between COMPANY and the purchasers of the seven motor vehicles.

5. In its December 17, 2004 request, the PETITIONER sought a refund of tax based on the amount of the purchase price that remained unpaid on each vehicle at the time of its repossession. The Petitioner did not reduce the unpaid purchase price at the time of repossession by the amount it received upon selling the repossessed vehicle.

6. The Division claims that on March 7, 2005, it sent a Statutory Notice in which it informed the Petitioner that it was refunding a portion of the sales tax requested on four of the repossessed vehicles, but denying the remainder of the refund sought on these vehicles. The Division also denied the entire refund requested for the other three vehicles. In its Response to Petition for Redetermination (pp. 1,2), the Division explains that the “[r]efunds in total or in part were denied pursuant to Tax Commission Administrative Rule R865-19S-20.” The Division further explained that it reduced the refund on these vehicles by “a) the “vendor discount” allowed to the dealer when the dealer filed the sales tax returns associated with the sale of those four vehicles, b) the difference between the balance due on the sales contract and the activated loan and c) the amount recovered after the repossessed vehicle was re-sold.”

7. On March 16, 2005, the Petitioner contested the Division’s action by filing a Petition for Redetermination, in which it states that in a letter dated March 9, 2005, the Division offset its sales tax refund under the following rationale:

Administrative Rule R865-19S-20(C)(4) and Tax Bulletin 11-91 require that **any** recoveries for which credit has been given must be reported and sales tax paid.

Therefore, any recovery amount occurring prior to claiming the sales tax credit must be subtracted from the portion of the purchase price that remains unpaid at the time of repossession. The recovery amount received when a repossessed vehicle is sold reduces the amount of an account determined to be worthless. When a repossessed vehicle is sold, the amount received is considered a recovered amount and reduces the portion of the purchase price unpaid.

8. For income tax purposes, the PETITIONER writes off “bad debt” relating to vehicles that are repossessed. For purposes of calculating the amount of bad debt that is written off, the PETITIONER subtracts from the unpaid balance any proceeds that it receives upon selling the repossessed vehicle.

APPLICABLE LAW

1. The statutory provision in Utah law authorizing the credit or refund of sales tax for a vehicle that has been repossessed and for which a portion of the purchase price remains unpaid at the time of repossession has been recodified and amended over the last several years. Until July 1, 2004, UCA §59-12-107(7) provided the statutory authority for such credits or refunds, as follows:

Credit is allowed for prepaid taxes and for taxes paid on that portion of an account determined to be worthless and actually charged off for income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

2. From July 1, 2005 through June 30, 2006, UCA §59-12-104.3 provided the statutory authority allowing a credit or refund of sales tax for a repossessed motor vehicle, as follows in pertinent part:

- (1) Subject to Subsection (2), a seller of a motor vehicle may claim a credit for a tax under this chapter:
 - (a) that the seller collected; and
 - (b) on a motor vehicle that:
 - (i) has been repossessed; and
 - (ii) that the seller resells.
- (2) The amount of the credit allowed by Subsection (1) is equal to the product of:
 - (a) the portion of the motor vehicle’s purchase price that:
 - (i) was subject to a tax under this chapter; and
 - (ii) remains unpaid at the time of the repossession of the motor vehicle;
 - and
 - (b) the tax rate;

....

3. Section 59-12-104.3 was amended by the 2006 Legislature in S.B. 233 and, since July 1, 2006, has provided in pertinent part:

- (1) (a) Subject to Subsections (2) and (3), a seller that collects a tax under this chapter on the sale of motor vehicle may claim a credit for a tax under this chapter for a motor vehicle that:
 - (i) has been repossessed; and
 - (ii) that the seller resells.
- (b) A seller of a motor vehicle other than the seller that collects a tax under this chapter on the sale of that motor vehicle may claim a credit for a tax under this chapter:
 - (i) for a motor vehicle that the seller:
 - (A) repossessed; and
 - (B) resells; and
 - (ii) if the seller that collected the tax under this chapter on that motor vehicle:
 - (A) is no longer doing business in this state; and
 - (B) does not owe a tax under this chapter.
- (2) The amount of the credit allowed by Subsection (1) is equal to the product of:
 - (a) the portion of the motor vehicle's purchase price that:
 - a. was subject to a tax under this chapter; and
 - b. remains unpaid after the motor vehicle is resold; and
 - (b) the tax rate;

....

4. Utah Admin. Rule R865-19S-20 ("Rule 20") provides guidelines concerning the credit or refund of sales tax on returned goods, bad debts, and repossessions. Until July 1, 2005, Rule 20 provided as follows in pertinent part:

....

- C. Justified adjustments may be made and credit allowed for cash discounts, returned goods, bad debts, and repossessions that result from sales upon which the tax has been reported and paid in full by retailers to the Tax Commission.
 - 1. Adjustments and credits will be allowed only if the retailer has not reimbursed himself in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.
 - 2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off, or the repossession occurs.
 - 3. Any refund or credit given to the purchaser must include the related sales tax.
 - 4. Sales tax credits for bad debts are allowable only on accounts determined to be worthless and actually charged off for income tax purposes. Recoveries made on

bad debts and repossessions for which credit has been claimed must be reported and the tax paid.

5. Sales tax credit for repossessions is allowable on the basis of the original amount subject to tax, less down payment. This amount is multiplied by the ratio of the number of monthly payments not made, divided by the total number of monthly payments required by the contract.

a) For example: the credit allowed on a taxable \$30,000 car sale with a \$5,000 down payment financed on a 60-month contract and repossessed after 20 full payments were made would be \$16,667 as computed and shown below. The number of unpaid full payments is determined by dividing the total received on the contract by the monthly payment amount.

TABLE

Example:

(1) Original amount subject to tax	\$30,000
(2) Down payment	(5,000)
(3) Balance of taxable base financed	25,000
(4) Number of full payments unpaid at the time of repossession	40
(5) Total contract period (no. of months)	60

Line 4 divided by line 5 times taxable base financed equals repossession credit

$$(40/60) \times \$25,000 = \$16,667$$

b) In cases where a contract assignment creates a partial (part of the loan amount) recourse obligation to the seller, any repossession credit must be calculated in the same manner as shown above.

c) The credit for repossession shall be reported on the dealer's or vendor's sales tax return with an attached schedule showing computations and appropriate adjustments for any tax rate changes between the date of sale and the date of repossession.

6. Credit for tax on repossessions is allowed only to the selling dealer or vendor.

a) This does not preclude arrangements between the dealer or vendor and third party financial institutions wherein sales tax credits for repossessions by financial institutions may be taken by the dealer or vendor who will in turn reimburse the financial institution.

b) In the event the applicable vehicle dealer is no longer in business, and there are no outstanding delinquent taxes, the third party financial institution may apply directly to the Tax Commission for a refund of the tax in the amount that would have been credited to the dealer.

....

DISCUSSION AND CONCLUSIONS OF LAW

The PETITIONER requested a refund of sales tax on seven repossessed vehicle on December 17, 2004. The parties agree that the PETITIONER is a third party financial institution that, pursuant to Subsection (C)(6) of Rule 20, is entitled to request the refund associated with the seven vehicles because the dealership that had sold the vehicles had gone out of business.

The Division stated in its Answer to Petition for Redetermination (pp. 1,2) that it denied a portion of the Petitioner's refund request for four of the vehicles and the entirety of the request for the other three vehicles pursuant to Rule 20. The Division further explained that it reduced the refund request "by a) the "vendor discount" allowed to the dealer when the dealer filed the sales tax returns associated with the sale of those four vehicles, b) the difference between the balance due on the sales contract and the activated loan and c) the amount recovered after the repossessed vehicle was re-sold."

Only the latter of these three reductions are addressed by the parties at the Formal Hearing, in the PETITIONER'S Petition for Redetermination, and in the parties' respective briefs. For these reasons, the only matter upon which the Commission will rule is whether the PETITIONER is entitled to a refund of sales tax, for each vehicle, without a reduction for "the amount recovered after the repossessed vehicle was re-sold."

On December 17, 2004, the statute in effect authorizing a refund of sales tax on a repossessed vehicle is Section 59-12-107(7), which provides that a "credit is allowed for prepaid taxes and taxes paid" on either of two different amounts: 1) on that portion of an account determined to be worthless and actually charged off for income tax purposes; or 2) on the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract. At issue is whether the PETITIONER is entitled to a refund based on the greater or lesser of these amounts when both amounts are ascertainable, but different.

The PETITIONER stated at the Formal Hearing that the amount it charges off on a repossessed vehicle for income tax purposes is the amount that remains unpaid at the time of repossession **minus** the amount it receives upon selling the repossessed vehicle. The amount that the PETITIONER charges off for income tax purposes is equal to the first of the two amounts described in Section 59-12-107(7) and is the amount that the Division proposes the refund should be limited to.

The parties agree that the seven vehicles at issue were sold on conditional sales contracts. Accordingly, the amount that remained unpaid on these vehicles at the time of repossession is equal to the second of the two amounts described in Section 59-12-107(7) and is the amount on which the PETITIONER seeks a refund of sales tax. Because the amount it receives upon selling the vehicle is not deducted, this amount is greater than the amount calculated under the first option and would result in a greater amount of refunded sales tax.

Section 59-12-107(7), as written, is disjunctive and allows a refund of either amount. The version of Rule 20 in effect on December 17, 2004 states in Subsection (C)(2) that “[i]n no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off, or the repossession occurs.” The PETITIONER, in accordance with the rule, calculated the refund on the amount of sales tax unpaid at the time the goods were returned and the time the repossession occurred. The Division, on the other hand, seeks to calculate the refund at a later time, after the returned or repossessed goods are resold. Accordingly, Subsection (C)(2) appears to support the PETITIONER’S refund request.

Although Subsection (C)(4) of the rule provides that “[r]ecoveries made on bad debts and repossessions for which credit has been claimed must be reported and the tax paid,” Subsection (C)(5)(a) provides an example showing how to calculate the amount of sales tax that may be refunded on a repossessed

vehicle. The example excludes from the calculation any deduction of an amount that may be recovered upon selling the vehicle, even though one must assume that a repossessed vehicle will generally be sold. Thus, under the Division's rationale, the repossessed vehicle would have to have been worthless for the example to be correct.

For these reasons, the Commission finds that the PETITIONER'S refund request was consistent with and allowable under both the statute and rule in effect on December 17, 2004. For these reasons, the Commission reverses the Division's denial of the Petitioner's refund request based on this issue.

The Division argues that the Commission should implement a policy that supports its denial of the refund request because it is consistent with certain provisions of the Uniform Commercial Code. While the Division's arguments may not be without merit, they do not change the fact that the statute and rule in effect on December 17, 2004, allow the refund request sought by the Petitioner. Perhaps these policy considerations led to the Legislature changing the law to be in concert with the Division's position, effective July 1, 2006. However, the subsequent recodification and amendment of Section 59-12-107(7) and amendment of Rule 20 do not affect the decision in this matter. Accordingly, the Petitioner's appeal is granted.

DECISION AND ORDER

Based on the foregoing, the Tax Commission grants the Petitioner's appeal and finds that the amount the Petitioner received upon selling the repossessed vehicles at issue should not reduce the sales tax refund to which it is entitled. That portion of the Division's decision that required such an adjustment to the sales tax refund is overturned. It is so ordered.

DATED this _____ day of _____, 2006.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 05-0307

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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights: 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.

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