

05-1458
Refund Request
Signed 05/30/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FORMAL HEARING ORDER
)	
Petitioner,)	Appeal No. 05-1458
)	
v.)	
)	Tax Type: Sales/Use Tax
TAXPAYER SERVICES DIVISION,)	
UTAH STATE TAX COMMISSION,)	
)	
Respondent.)	Judge: Robinson

Presiding:

Commissioner Marc Johnson
R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Attorney at Law, *pro se*
For Respondent: RESPONDENT REPRESENTATIVE, Assistant
Attorney General

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 9, 2006. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On April 17, 2000, Petitioner purchased a 2000 (X), VIN ##### from COMPANY A. The purchase price was \$\$\$\$\$. Sales tax listed on the Motor Vehicle Contract of Sale was \$\$\$\$\$.

2. Following the purchase, on April 21, 2000, Petitioner arranged financing through the COMPANY B (hereinafter COMPANY B). He apparently borrowed \$\$\$\$\$ from the

COMPANY B, though the Promissory Note and Truth in Lending Disclosure Statement, like the other copies of loan documents submitted by Petitioner, are not signed by him or an authorized representative of the COMPANY B. However, it appears the COMPANY B made a loan at some point, because on July 28, 2000, a Certificate of Title issued showing Petitioner and (X) as owners and the COMPANY B as lien holder.

3. Among the unsigned documents submitted by Petitioner is one captioned “Residual Addendum.” It shows a residual of \$\$\$\$\$, which it states shows on all loan documents as final payment. It also lists four options.

4. The first option is trade the vehicle and pay off the remaining balance under the terms of the loan agreement. The second is to sell the vehicle and pay off the balance under the terms of the loan agreement. The third is to keep the vehicle and refinance or pay off the remaining unpaid balance in compliance with federal, state, and local requirements. The fourth is to return the vehicle to the lender.

5. Under the fourth option are listed three conditions. The borrower is to comply with all the requirements of the Loan Agreement and the Residual Addendum, return the vehicle with all original accessories, and pay the difference between the adjusted final payment and the final payment. The agreement goes on to define the adjusted final payment as the future value minus the total of a mileage charge, cost of repair or replacement caused by an occurrence normally covered by insurance, and the cost of replacing any missing equipment. The date the residual addendum requires proper exercise of one of the options is April 21, 2005. As pointed out above, the copy of the Residual Addendum was not signed. It does not establish Petitioner and the COMPANY B made it part of the loan apparently made to Petitioner.

6. On May 4, 2005, the COMPANY B repossessed the vehicle. Above the applicant's signature on the Repossession Statement is the following:

Under penalty of perjury, I declare that I acted as an agent for the company who is recorded as lien holder on the Utah Certificate of Title shown on this statement and I did lawfully repossess the said vehicle under default based on the conditions of the original instrument. I further certify that said vehicle was repossessed from the person or company named on this statement and that I delivered and conveyed all rights, title, and interest to the transferee named hereon.

7. The Repossession Statement is signed on behalf of the COMPANY B. However, the photocopy does not permit reading of the name signed.

8. Petitioner asserts the COMPANY B did not repossess the vehicle. He says the COMPANY B instructed him to turn the vehicle into the (X). He states what occurred in this case is standard procedure at the COMPANY B. Because of time constraints, it had to list the vehicle as repossessed in order to clear the title so the vehicle could be sold at auction. Petitioner said (X) at the COMPANY B would confirm this, and that she would provide an affidavit if necessary.

9. COMPANY C, of CITY, STATE, purchased the vehicle at auction for \$\$\$\$\$ on June 1, 2005. (X), Petitioner's cousin, is the General Manager of COMPANY C. On that date, (X) sent a letter to Petitioner on COMPANY C letterhead advising him the total purchase price of the vehicle was \$\$\$\$\$. Accompanying the letter was a Vehicle Buyers Order listing the purchase price of \$\$\$\$\$.

10. Petitioner apparently purchased the vehicle from COMPANY C sometime in June 2005, for the amount on the Vehicle Buyers Order.

11. COMPANY C reassigned the title to the vehicle to Petitioner on June 1, 2005, for the amount on the Vehicle Buyers Order.

12. On June 3, 2005, (X) paid State sales tax in the amount of \$\$\$\$\$, local sales tax in the amount of \$\$\$\$\$, county options sales tax in the amount of \$\$\$\$\$, in addition to other taxes and fees that brought the total paid to \$\$\$\$\$. She received a temporary permit for the vehicle. On June 21, 2005, Petitioner submitted an application for original title to the vehicle.

13. On July 5, 2005, Petitioner sought a refund of \$\$\$\$\$, alleging this amount was sales tax that should not have been assessed. At the hearing, he acknowledged this figure included more than sales taxes, and modified his request accordingly.

APPLICABLE LAW

59-12-102. Definitions.

As used in this chapter:

(69) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other than:

(a) resale;

59-12-103(1) (a) provides,

(1) 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;

CONCLUSIONS OF LAW

1. The sale of the vehicle to Petitioner on April 17, 2000, was a retail sale of tangible personal property, upon which sales tax was properly imposed.

2. The sale of the vehicle to Tom Addis Newport Ford on June 1, 2005, was not a retail sale. It was for resale. No sales tax was imposed.

3. The sale of the vehicle to Petitioner by Tom Addis Newport Ford on June 1, 2005 to Petitioner was a retail sale of tangible personal property, upon which sales tax was properly imposed.

DISCUSSION

Sales and use taxes are transactional taxes on retail sales of personal property. In this case, there were three sales of personal property. Petitioner made two retail purchases of the vehicle. He first purchased it on April 17, 2000 from COMPANY A, which computed the sales tax of \$\$\$\$\$, and presumably remitted it to the Tax Commission as required by law. On April 21, 2000, Petitioner apparently obtained financing through the COMPANY B. Petitioner's unsigned documents do not establish the financing was a lease. There is no evidence the COMPANY B remitted sales tax upon receipt of each monthly payment, as would be expected under a lease.

Assuming the unsigned Residual Addendum was part of the financing, Petitioner did not exercise any of the options available to him under it. Instead, per the Repossession Statement signed under penalty of perjury, the COMPANY B repossessed the vehicle on May 4, 2005. The COMPANY B sent it to auction, where it was purchased wholesale by COMPANY C on June 1, 2005.

On June 1, 2005, COMPANY C made retail sale of the vehicle to Petitioner, his second retail purchase of the vehicle, for \$\$\$\$\$. On June 2, 2005, (X) paid the required taxes and fees to register the vehicle.

Petitioner argued that the law does not provide for tax on more than the total purchase price. The Petitioner also argued value equals purchase price, and that he ultimately paid a total \$\$\$\$\$ for the vehicle. He requests a refund on the grounds he should be required to pay sales tax on that amount.

Petitioner's argument ignores the fact that there were two separate retail sales. Under the law, each retail sale of tangible personal property is subject to tax. Had PETITIONER exercised the third option (to retain the vehicle and refinance the balance), his total purchase price for the vehicle would have been the original purchase price of \$\$\$\$\$. He was able to reduce his overall cost for the vehicle by allowing the "repossession" to occur and, subsequently, repurchasing the "repossessed" vehicle from a cooperating dealership. Petitioner is entitled to plan his affairs to reduce his overall cost for the vehicle but, having done so, he is bound to accept the sales tax consequences of his decision.

Because the Commission finds there were two separate retail sales, there is no need to address arguments relating to a refund or whether a portion of a refund is beyond the period of limitations for requesting one.

DECISION AND ORDER

The Commission affirms the collection of sales tax on the two purchases by Petitioner. It is so ordered.

DATED this _____ day of _____, 2006.

R. Spencer Robinson
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 _____, 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 Sec. 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 Sec. 59-1-601 and 63-46b-13 et. seq.

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