

05-1653
Audit
Signed 06/12/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-1653
v.	)	Account No.	#####
)		
AUDITING DIVISION OF	)	Tax Type:	Sales Tax
THE UTAH STATE TAX	)	Tax Period:	2003
COMMISSION,)		
)		
Respondent.	)	Judge:	Robinson

Presiding:
R. Spencer Robinson, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE, Assistant Attorney General

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 March 14, 2006. Petitioner is appealing an audit deficiency of additional sales tax and interest relating to Petitioner's purchase of an ATV. The Preliminary Notice was issued on September 30, 2005. A Statutory Notice was issued on November 8, 2005. The amount of additional tax at issue is \$\$\$\$\$, along with interest that continues to accrue thereon.

DISCUSSION

Petitioner owns an interest in real property qualifying for greenbelt. The property is near CITY, Utah. It has been in Petitioner's family for over 100 years. About 38 acres is farmable. The rest is leased as range land.

There is a tenant on the property. Petitioner does not live on it. During eight to nine months of the year, Petitioner does work on the property. He uses the ATV to service fencing, pull

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trailers with fencing materials and supplies, and to access areas of the property. Two or three days per year, he uses the ATV to hunt.

Petitioner used a Schedule E when filing his income taxes. The property is leased with the intent to derive income. His CPA wrote stating the property produced no agricultural income. Petitioner said he and family members do the cultivation and improvements. He said the tenant does not do those things.

APPLICABLE LAW

An exemption from sales tax is provided for certain purchases of personal property used in farming at Utah Code Sec. 59-12-104(20) as follows:

- (a)(i) sales of tangible personal property used or consumed primarily and directly in farming operations, including sales of irrigation equipment and supplies used for agricultural production purposes, whether or not they become part of real estate and whether or not installed by farmer, contractor, or subcontractor, but not sales of:
 - (A) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools and maintenance and janitorial equipment and supplies;
 - (B) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or
 - (C) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put; or
- (ii) sales of parts used in the repairs or renovations of tangible personal property if the tangible personal property is exempt under Subsection (20(a)); or
- (b) sales of hay;

Utah Administrative Rules regulate the sales tax exemption for farmers. Rule R865-19S-49(C) reads as follows:

The sale and use tax exemption for sale of tangible personal property used or consumed primarily and directly in farming operations applies only to commercial farming operations, as

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evidenced by the filing of a federal Farm Income and Expenses Statement (Schedule F) or other similar evidence that the farm is operated as a commercial venture.

DISCUSSION

The issue before the Commission in this matter is whether Petitioner is entitled to a sales tax exemption on his 2003 purchase of an ATV. Petitioner owns farming property. However, Petitioner did not personally farm the property. Instead he leased the farm to a tenant. Petitioner does upkeep and maintenance. Petitioner indicates that he primarily uses his ATV to perform these tasks.

Respondent did not contradict Petitioner's evidence of how he uses the ATV. However, Respondent argued that Petitioner is not engaged in a "commercial farm operation." Under R865-19S-49(C), the sales tax exemption applies only to "commercial farming operations, as evidenced by the filing of a federal Farm Income and Expenses Statement (Schedule F) or other similar evidence that the farm is operated as a commercial venture." As described in the Rule, Petitioner's operation is not a "commercial farming operation." He did not file a Schedule F. His CPA wrote saying no agricultural income was produced by the property.

DECISION AND ORDER

Based on the forgoing, Petitioner's appeal in this matter of the Statutory Notice, dated November 8, 2005, is denied. 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 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:

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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.

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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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