

05-1700  
Audit  
Signed 09/14/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
	)		
Petitioner,	)	Appeal No.	05-1700
	)		
v.	)	Account No.	#####
	)		
AUDITING DIVISION OF THE	)	Tax Type:	Sales Tax
UTAH STATE TAX COMMISSION,	)		
	)	Periods:	06/01
Respondent.	)		
	)	Judge:	Robinson

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**Presiding:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *pro se*

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
RESPONDENT REPRESENTATIVE 2, Assistant Division Director  
RESPONDENT REPRESENTATIVE 3, Audit Manager

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 April 25, 2006. Petitioner is challenging the assessment of sales tax, penalty, and interest on his purchase of a motor vehicle.

Petitioner purchased a vehicle from COMPANY in February of 2002. At the time of the purchase, Petitioner was living and working in Utah. However, his father, who was also to be listed on the title, was a resident of STATE. Petitioner told COMPANY that it would be necessary to register the car in STATE because his father was to be a co-owner and because his automobile insurance required the vehicle be registered in STATE. COMPANY assisted

Petitioner with a loan. Included in the loan amount was a check to pay for licensing, registration, and sales tax in STATE. COMPANY also prepared a nonresident affidavit for sales tax exemption for Petitioner's signature. Petitioner signed it. ( X ) also signed it on behalf of COMPANY.

Petitioner accepted delivery of the vehicle believing he qualified for the exemption and that sales tax was due in STATE. On March 15, 2002, Petitioner paid sales tax to STATE in the amount of \$\$\$\$\$.

Respondent conducted an audit. In August of 2005 it sent a preliminary notice to Petitioner of its position that he owed sales tax to Utah. On November 25, 2005, Respondent sent a statutory notice to Petitioner informing him of its position, that he owed \$\$\$\$\$ in sales tax, \$\$\$\$\$ in penalty, and interest.<sup>1</sup> Payment was due on December 25, 2005. The notice also informed Petitioner that if he did not appeal within thirty days, the Statutory Notice would become the final assessment and the Commission would not have authority to consider his appeal. Additionally, the notice informed Petitioner that a failure to pay penalty would attach.

On December 5, 2005, Petitioner submitted a Petition for Redetermination. By the time he did so, the three-year period of limitations in which to seek a refund from STATE had run. Thus, Petitioner asks that he be allowed to pay the difference in the sales tax, rather than the full amount due at the time of purchase to the State of Utah.

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<sup>1</sup> Neither party provided information on the tax due, penalties assessed, or interest, nor was that information in the Appeals Unit file at the time of the hearing. On August 17, 2006, an Appeals Unit staff member accessed that information via computer. Reference to that information is contained in this Order. If either party wishes to dispute that information, it should provide written notice to the Appeals Unit and to the other party. Absent notice of a dispute, the Commission shall presume it to be accurate.

Respondent declined that request. It asked for payment in full of the sales tax, in addition to penalty and interest.

APPLICABLE LAW

Utah Code Section 59-1-401. Offenses and penalties - Rulemaking authority - Statute of limitations - Commission authority to waive, reduce, or compromise penalty or interest.

(2) The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:

(c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency;

....

(5)(a) Additional penalties for underpayments of tax are as provided in Subsections (5)(a)(i) through (iv).

(i) Except as provided in Subsection (5)(c), if any underpayment of tax is due to negligence, the penalty is 10% of the underpayment.

....

(11) Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.

Utah Code Ann. §59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

(9) 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;

DISCUSSION

Petitioner was not a bona fide nonresident of STATE at the time he purchased the vehicle. He was living and working in Utah. Thus, he did not qualify to purchase the vehicle exempt from Utah sales tax under §59-12-104 (9). The fact that his father, an STATE resident, was also listed on the title does not alter this.

Petitioner's account regarding the sale suggests COMPANY knew, or should have known, that Petitioner did not qualify to purchase the vehicle as a non-resident. Assuming this to be the case, it has no bearing on whether Petitioner's purchase of the vehicle was taxable.

However, Petitioner appears to have acted in good faith, relying on COMPANY'S representations that he qualified to purchase the vehicle exempt from sales tax. He arranged for, and made payment of sales tax to the State of STATE. He was not negligent in paying the sales tax to Utah, nor did he fail to make payment or file an appeal within thirty days of the statutory notice sent by Respondent.

While Petitioner did not have the time value of the money he paid to the State of STATE, the State of Utah has not had the money owed to it. Thus, Petitioner owes interest on the full amount of the purchase price.

DECISION AND ORDER

Based on the foregoing, the Commission finds Petitioner does not qualify for the exemption provided under §59-12-104 (9). Thus, he is responsible to pay sales tax on the purchase of his vehicle. While it is regrettable the error was not discovered in time for Petitioner to seek a refund from STATE, the fact remains he is liable for the full amount of the sales tax

due to Utah. He may not offset the amount owed by the amount he mistakenly paid to the State of STATE.

Petitioner acted in good faith when he arranged for and made payment of the sales tax to STATE. This is sufficient to support a waiver of the penalty in this case.

The State of Utah did not have the money it should have received. Petitioner owes interest on the purchase price of the vehicle.

Based on the foregoing, the Commission finds Petitioner is liable to pay sales tax on the purchase of vehicle in the amount of \$\$\$\$\$. The Commission grants Petitioner's request for a waiver of the penalty. The Commission denies Petitioner's request for a waiver of interest on the purchase price. 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:

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. Additionally, absent an appeal, payment in full is due within thirty days of this Order.

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Failure to make payment in full within thirty days may result in the imposition of a late payment penalty.

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

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner