

06-0037  
Audit  
Signed 10/30/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>INITIAL HEARING ORDER</b>
Petitioner,	)	
	)	Appeal No.    06-0037
v.	)	Account No.   #####
	)	
AUDITING DIVISION OF THE	)	Tax Type:     Sales Tax
UTAH STATE TAX COMMISSION,	)	Audit Period:  2005
	)	
Respondent.	)	Judge:        Robinson

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**Presiding:**  
    R. Spencer Robinson, Administrative Law Judge

**Appearances:**  
    For Petitioner:    PETITIONER, *pro se*, by telephone  
    For Respondent:    RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
                        RESPONDENT REPRESENTATIVE 2, Tax Audit Manager  
                        RESPONDENT REPRESENTATIVE 3, Assistant Division Director

STATEMENT OF THE CASE

On December 16, 2005, Respondent sent Petitioner a Statutory Notice of Sales and Use Tax Liability for the 2005 tax year. Petitioner responded on January 16, 2006 by filing a Petition for Redetermination. The parties participated in an Initial Hearing on April 17, 2006. At issue is Petitioner's request for a waiver of the 100% fraud penalty sought by the Respondent.

APPLICABLE LAW

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

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

(iv) If the underpayment is due to fraud with intent to evade the tax, the penalty is the greater of \$500 per period or 100% of the underpayment.

59-10-543. Burden of proof.

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commission:

(1) whether the petitioner has been guilty of fraud with intent to evade tax;

59-12-107. . . . Direct payment by purchaser of vehicle

(4) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to titling or registration under the laws of this state.

(b) The commission shall collect the tax described in Subsection (4)(a) when the vehicle is titled or registered.

59-1-401(11) Waiver

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.

### DISCUSSION

Because Respondent alleged fraud, it has the burden of proof. It must prove, by a preponderance of the evidence, that Petitioner engaged in fraud with the intent to evade the tax. It need not prove that Petitioner engaged in a criminal act.

The facts, acknowledged by Petitioner, are that he purchased a 2001 Toyota Tacoma pickup truck on April 21, 2005 for \$\$\$\$\$. When he registered the vehicle, he presented a Bill of

Sale showing the purchase price as \$\$\$\$\$. He said this was his first purchase of a vehicle. He said his CPA, CPA, had assisted him in establishing an LLC. Petitioner said that CPA had told him since the truck was purchased for use in Petitioner's business, the costs were deductible.

Petitioner said he assumed he could pay the remainder of the tax at the end of the year. However, Petitioner acknowledged CPA did not tell Petitioner to list the sale price as \$\$\$\$\$. After Petitioner brought this issue to CPA's attention, he informed Petitioner that income tax was different from sales tax

Via a Subpoena Duces Tecum, the Respondent acquired information from COMPANY regarding Petitioner's purchase of the vehicle. The documents provided in response to the Subpoena showed the purchase price to be \$\$\$\$\$.

Respondent present these documents as evidence at the hearing. The Bill of Sale provided under subpoena is form TC-843, which is available via the Internet and may be filled in online. This Bill of Sale shows typewritten entries reflecting the purchase price, entered in the blanks on the form. The form states the purchase price in both alpha characters (\$\$\$\$\$) and numeric characters (\$\$\$\$\$). Respondent also presented a copy of the Bill of Sale used by Petitioner when registering the vehicle. It contains no alpha characters reflecting purchase price and has a handwritten entry of \$\$\$\$\$ as the purchase price.

There are two possible explanations for the existence of Bills of Sale reflecting different values. One is that the Petitioner altered a copy of the Bill of Sale listing the purchase price as \$\$\$\$\$. The other is that the seller provided Petitioner with two different Bills of Sale, one listing the purchase price as \$\$\$\$\$ and the other listing it as \$\$\$\$\$.

Respondent relies on §59-1-401 (5)(a)(iv), which provides for a penalty of \$500 or

100% of the underpayment in cases when the underpayment is due to fraud with intent to evade the tax. The Respondent's position is that the deliberate representation of the purchase price at \$\$\$\$\$ constitutes fraud. Thus, the Respondent asks the 100% penalty be sustained. Respondent stated the tax due was \$\$\$\$\$. The penalty sought is also \$\$\$\$\$. Respondent also seeks interest on the amount due. Petitioner has paid the tax. He requests a waiver of the penalty.

In Jensen v. State Tax Commission, 835 P.2d 965, (Utah 1992), the Court noted that keeping two sets of books, or making false entries or alterations, or false invoices or documents, gave rise to the inference that one so doing willfully attempted to evade income tax. Respondent argues that the facts of this case give rise to the inference of intent to evade payment of the sales tax on the vehicle.

The American Heritage Dictionary defines fraud as, "a deception deliberately practiced in order to secure unfair or unlawful gain."<sup>1</sup> Merriam-Webster's Dictionary of Law defines fraud as,

any act, expression, omission, or concealment calculated to deceive another to his or her disadvantage; specifically : a misrepresentation or concealment with reference to some fact material to a transaction that is made with knowledge of its falsity or in reckless disregard of its truth or falsity and with the intent to deceive another and that is reasonably relied on by the other who is injured thereby.<sup>2</sup>

Petitioner's conduct was fraudulent. He deliberately misrepresented the purchase price of the vehicle in order to pay less sales tax than required by law. The Legislature established the penalty set forth in §59-1-401 (5)(a)(iv) to discourage the very conduct in which Petitioner engaged.

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<sup>1</sup> The American Heritage® Dictionary of the English Language, Fourth Edition. Retrieved August 29, 2006, from Dictionary.com website

<sup>2</sup> Merriam-Webster's Dictionary of Law. Retrieved August 29, 2006, from Dictionary.com website

Petitioner requests a waiver of the penalty. The Commission has the authority to waive penalties under §59-1-401(11) when the evidence establishes reasonable cause. While the Commission recognizes there are financial challenges associated with starting a business, the evidence in this case does not establish reasonable cause for waiving the penalty. Instead, it establishes one of two alternatives: Petitioner submitted an altered Bill of Sale when registering the vehicle; or, Petitioner had two Bills of Sale created, one used to obtain financing, the other to calculate sales tax. Either shows Petitioner engaged in fraud with the intent to evade the tax. Thus, the evidence supports application of the fraud penalty. Respondent has met its burden of proof.

ORDER

Based upon the evidence presented, the Commission denies Petitioner's request for a waiver of the penalty. The Commission affirms Respondent's assessment of the fraud penalty. Petitioner owes a penalty of \$\$\$\$\$. Petitioner also owes interest on that amount. 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

Appeal No. 06-0037

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2006.

\_\_\_\_\_  
R. Spencer Robinson  
Administrative Law Judge

BY ORDER OF THE COMMISSION.

The undersigned have reviewed the Initial Hearing Order and 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

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