

06-0041  
Audit  
Signed 09/05/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>INITIAL HEARING ORDER</b>
Petitioner,	)	
	)	
v.	)	Appeal No.    06-0041
	)	Account No.   #####
AUDITING DIVISION,	)	
UTAH STATE TAX COMMISSION,	)	Tax Type:     Sales Tax
STATE OF UTAH,	)	Audit Period:  2005
	)	
Respondent.	)	Judge:        Robinson

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

**Appearances:**  
For Petitioner:    PETITIONER  
For Respondent:    RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
                    RESPONDENT REPRESENTATIVE 2, Tax Audit Manager

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 10, 2006 by filing a Petition for Redetermination. The parties participated in an Initial Hearing on April 3, 2006. At issue is Petitioner's request for a waiver of the 100% fraud penalty sought by the Respondent.

The facts, acknowledged by Petitioner, are that he purchased a vehicle in August of 2005 for \$\$\$\$\$. When he registered the vehicle, he represented the purchase price as \$\$\$\$\$. He said he was a full-time student with limited funds, and made the representation to reduce the amount he would pay in sales tax. He acknowledged this was wrong and that he lied about the purchase price. He said he was trying to save some money, that others told him this could be done, and that he had no malicious intent. He said he was willing to pay the tax, but asked for mercy and a waiver of the penalty.

The Respondent said the lien holder information showed the purchase price to be \$\$\$\$\$,

not the \$\$\$\$ represented by Petitioner when he registered the vehicle. 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 imposed. Respondent stated the tax due was \$\$\$\$\$. The penalty sought is also \$\$\$\$.

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.

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.<sup>3</sup> While the Commission recognizes the financial challenges facing most students, the evidence in this case does not establish reasonable cause for waiving the penalty.

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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

<sup>3</sup> 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.

ORDER

Based upon the evidence presented, the Commission denies Petitioner's request for a waiver of the penalty. Petitioner owes sales tax in the amount of \$\$\$\$ and a penalty of \$\$\$\$\$. 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.

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

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

Appeal No. 06-0041

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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