

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, vs. TAXPAYER SERVICES DIVISION, UTAH STATE TAX COMMISSION Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER</p> <p>Appeal No. 06-0134</p> <p>Tax Type: Sale Tax – Penalty & Interest Period: 09/05, 10/05</p> <p>Judge: Robinson</p>
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Presiding:

Commissioner R. Bruce Johnson
R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, from the Taxpayer Services Division
RESPONDENT REPRESENTATIVE 2, from the Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 19, 2007. Petitioner is appealing a late filing penalty of \$\$\$\$ for September of 2005, and \$\$\$\$ for October of 2005, plus interest. Petitioner's appeal also asked its request to pay quarterly be heard. Based on the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is in the business of repairing damage done to motor vehicles as a result of accidents.
2. Petitioner's business is largely dependent on payment from insurance companies for the work it does. The insurance companies pay Petitioner for its work from thirty to sixty days after Petitioner has released the vehicle to its owner. In a few instances, payment was made after sixty days had passed.

3. Petitioner is required to file monthly sales tax returns, and is required to file and pay by EFT.

4. Because Petitioner is not paid when it returns a repaired vehicle to its owner, Petitioner feels it is “floating” sales tax payments to the State of Utah.

5. In August of 2004 and January of 2005, Petitioner filed and paid timely, but did not do so by EFT. Respondent disallowed the vendor discount.

6. Petitioner filed its April 2005 return late. Respondent received no waiver request.

7. In June and July of 2005, Petitioner filed and paid late. Petitioner did not file by EFT. Petitioner requested a waiver of these penalties. Respondent waived the penalties and reinstated the vendor discount.

8. Petitioner’s September 2005 filing and payment were due by October 30, 2005. Petitioner filed and paid \$\$\$\$ on November 25, 2005. Petitioner owed \$\$\$\$\$. Because the payment was late and not paid by EFT, Respondent disallowed the vendor discount. The penalty for failure to file was \$\$\$\$\$. Respondent also assessed interest.

9. Petitioner’s October 2005 filing and payment were due by November 30, 2005. Petitioner filed and paid on December 27, 2005. Petitioner owed \$\$\$\$\$. Petitioner paid \$\$\$\$\$. Because the payment was late and not paid by EFT, Respondent disallowed the vendor discount. The penalty for failure to file was \$\$\$\$\$. Respondent also assessed interest.

10. Petitioner filed a waiver request regarding the penalties and interest for the September and October periods. Respondent denied the Request.

11. Respondent said it had not received a request from Petitioner to file quarterly prior to the hearing.

APPLICABLE LAW

Utah Code Ann. §59-12-103 provides as follows:

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;

.....

(g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

(i) the tangible personal property; and

(ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations of that tangible personal property;

Utah Code Ann. §59-12-102

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

- (a) resale;
- (b) sublease; or
- (c) subrent.

.....

(79)(a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

- (b) "Sale" includes:
 - (i) installment and credit sales;

.....

Utah Code Ann. 59-12-107

(1) (a) Except as provided in Subsection (1)(d) or Section 59-12-107.1 and subject to Subsection (1)(e), each seller shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the seller:

- (i) has or utilizes:

.....

(F) a place of business similar to Subsections (1)(a)(i)(A) through (E);

.....

(3)(d) The sales tax as computed in the return shall be based upon the total nonexempt sales made during the period, including both cash and charge sales.

Utah Code Ann. 59-1-401

(1) (a) The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return.

.....

(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.

CONCLUSIONS OF LAW

1. When Petitioner releases a vehicle to its owner in anticipation of payment from an insurance company, a sale, as defined in §59-12-102(77) occurs. Petitioner has exchanged the vehicle for anticipated payment from the insurance company. It is a type of installment or credit sale.

2. Because the sale is not for resale, sublease, or subrent, it is a retail sale. Utah Code Ann. Sec. 59-12-102(79).

3. Sales tax is imposed at the time of the sale under §59-12-103(a) and (g), and §59-12-107, not at the time the insurance company remits payment to Petitioner for the work done.

4. Because the returns for September and October of 2005 were filed after the date they were due, they are subject to a penalty of \$20 or 10% of the unpaid tax due.

5. The time between the release of vehicles to customers and payment by insurance companies does not establish reasonable cause to waive penalties.

DISCUSSION

Petitioner's assertion that it is "floating" sales tax payments (see Finding of Fact number 4) may be construed as a request to be allowed to collect and remit sales tax upon receipt of payment from the insurance companies. The sales tax is to be collected at the time of the sale, and to be remitted with the return for the period during which the sale occurred. While the Commission recognizes the timing of insurance payments may make this inconvenient for Petitioner, it does not establish reasonable cause for the waiver of penalties.

Petitioner's compliance history shows previous late filings and waivers granted by the Respondent. In some instances penalties were imposed. In others, they were waived when Petitioner requested a waiver. This provided notice to Petitioner that penalties would follow if returns were not filed in a timely manner, notwithstanding the lag between the release of vehicles to customers and payment by the insurance companies. The evidence presented in this case does not warrant additional waivers.

Because the Respondent had not received, prior to the hearing, a request from the Petitioner to file quarterly, it did not address that question. The Commission will not address it until the Respondent receives a request and responds.

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the penalties imposed by Respondent for September and October of 2005. The Commission also sustains interest. It is so ordered.

DATED this ____ day of _____, 2007.

R. Spencer Robinson
Administrative Law Judge

Appeal No. 06-0134

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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice: Failure to pay within thirty days the balance that results from this order may result in additional penalties and interest. 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 et seq. & 63-46b-13 et seq.