

06-0173
Audit
Signed 11/08/2006

BEFORE THE UTAH STATE TAX COMMISSION

| | | | |
|----------------------------|---|--------------|-----------|
| PETITIONER, |) | ORDER | |
| |) | | |
| Petitioner, |) | Appeal No. | 06-0173 |
| |) | | |
| v. |) | Account No. | ##### |
| |) | | |
| AUDITING DIVISION OF THE |) | Tax Type: | Sales Tax |
| UTAH STATE TAX COMMISSION, |) | | |
| |) | Periods: | May 2003 |
| Respondent. |) | | |
| |) | Judge: | Robinson |

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Attorney at Law

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 May 15, 2006. Petitioner filed a post hearing brief on June 13, 2006. Respondent filed its post hearing brief on June 22, 2006. Petitioner is challenging the assessment of sales tax, penalty, and interest on her purchase of a motor vehicle.

In 2003, Petitioner was employed at COMPANY A in CITY 1, STATE 1. Petitioner's employer granted her an unpaid leave of absence in order for her to do an internship with the COMPANY B in CITY 2, Utah. Petitioner's employer allowed her to participate in the internship on the basis it would increase her value to it as an employee. Petitioner submitted a letter from the hospital stating she was employed by the hospital on August 31, 2003.

The internship was from June 2, 2003, to August 30, 2003. Petitioner did not acquire a Utah driver's license during the internship. She had an STATE 2 driver's license. During the internship, she did not own, lease, or rent a home in Utah. She stayed with friends in CITY 2. She received a stipend of \$\$\$\$ per month. A November 15, 2005 letter from the COMPANY B identifies Petitioner as an employee from June 2 to August 30, 2003.

On August 29, 2003, Petitioner purchased a vehicle from COMPANY C of CITY 3. The dealer and Petitioner signed a Non-resident Affidavit for Sales Tax Exemption. Petitioner averred she did not file Utah income tax returns as a resident, nor was she registered as a business with the Utah Department of Commerce. She said she was not conducting business in Utah, had no vehicle registered in Utah, did not own, lease, or rent a residence or place of business in Utah, and indicated she was not a non-resident student or member of the military leaving Utah within thirty days of the purchase. She did not plan on registering the vehicle in Utah. She registered it in STATE 1 following her return to STATE 1. She paid sales tax to STATE 1. She did not have a Utah driver's license. She listed her STATE 1 address on the affidavit.

When she signed the affidavit, Petitioner certified the vehicle would be taken out of Utah permanently and would not be used or registered in Utah except as described in the affidavit. The Respondent acknowledged in the hearing that, at the time Petitioner filled out the affidavit, she did so accurately.

On January 26, 2006, Respondent sent Petitioner a Statutory Notice – Sales and Use Tax regarding the purchase of the vehicle. The notice also informed Petitioner she could appeal if she disagreed with the audit.

On February 18, 2006, Petitioner filed a Petition for Redetermination. Petitioner said she was a non-resident, and that the dealer told her to pay the tax in STATE 1. She purchased automobile insurance for the vehicle in STATE 1 on September 8, 2003. She registered it in STATE 1 on September 10, 2003. She paid sales tax to STATE 1 on September 11, 2003, with a check prepared by the dealer in the amount of \$\$\$\$\$.

When Petitioner returned to STATE 1, she learned her position had been changed. She worked for the hospital for four days, after which she resigned. She worked from ten days to two weeks at a swimming job in STATE 1. She returned to Utah at the end of September 2003.

Petitioner worked in Utah after her return. She worked for a family that paid her through COMPANY D, from October through December of 2003. Her total compensation from COMPANY D, listed on a W-2, was \$\$\$\$\$. She also did some work for the COMPANY B following her return. Her W-2 from the COMPANY B shows a total compensation of \$\$\$\$\$. She said part of this amount was the \$\$\$\$\$ per month stipend. A printout of a Benefit Wages screen (information from Workforce Services) shows Petitioner received \$\$\$\$\$ during the second quarter of 2003, \$\$\$\$\$ during the third quarter of 2003, and \$\$\$\$\$ in the fourth quarter of 2003 from the COMPANY B. There is no evidence Petitioner requested the COMPANY B to report the stipend to Workforce Services, or that she declared herself a resident in order to obtain a benefit, such as unemployment compensation or worker's compensation.

Petitioner also received a W-2 from COMPANY E (\$\$\$\$\$) and from COMPANY F (\$\$\$\$\$) for work done in Utah during 2003. With the exception of the stipend paid during her internship, Petitioner earned all the wages reflected on W-2 forms after her return to Utah at the end

of September 2003. The total earned after she returned to Utah in September of 2003 was \$\$\$\$\$. She filed a part-year resident state income tax return in both STATE 1 and Utah.

After learning of the Respondent's position regarding sales tax on her purchase of her vehicle, Petitioner sought a refund of the sales tax she paid to STATE 1. In a letter dated February 21, 2006, the STATE 1 Department of Taxation denied Petitioner's request for a refund. The letter stated that Petitioner was a resident of STATE 1 at the time she purchased the vehicle. Therefore, under STATE 1 law, she was required to pay sales tax on the purchase of the vehicle to STATE 1. The letter also outlined Petitioner's right to appeal that decision. There is no evidence she filed an appeal in STATE 1.

APPLICABLE LAW

Utah Code Ann. §59-12-104, in effect in 2003, states in pertinent part,

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;

R865-19S-98. Sales to Nonresidents of Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Sales to Nonresidents of Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

....

(B) In order to qualify as a nonresident for the purpose of exempting vehicles from sales tax under Subsections 59-12-104(9) and 59-12-104(31), a vehicle owner may not:

....

(4) except in the case of a tourist temporarily within this state, own, lease, or rent a residence or a place of business within this state, or occupy or permit to be occupied a Utah residence or place of business;

(5) except in the case of an employee who can clearly demonstrate that the use of the vehicle in this state is to commute to work from another state, be engaged in a trade, profession, or occupation or accept gainful employment in this state;

....

(E) Vehicles are deemed not used in this state beyond the necessity of transporting them to the borders of this state if purchased by:

(1) a nonresident student who will be permanently leaving the state within 30 days of the date of purchase;

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.

DISCUSSION

Tax exemptions are to be construed narrowly. See Morton Int'l Inc. v. Auditing Division of the Utah State Tax Comm'n, 814 P.2d 581, 591 (Utah 1991). The parties have addressed three provisions of R865-19S-98 that may provide an exemption to Petitioner. The Commission applies them to the circumstances that existed at the time Petitioner purchased the vehicle.

The first is R865-19S-98 (B)(4). Under this portion of the rule, in order to qualify as a nonresident, a person may not own, lease, rent, or occupy a Utah residence. An exception is made for tourists temporarily in Utah. Petitioner was not a tourist. However, she was a resident of STATE 1 who was in Utah for a temporary purpose. Therefore, the Commission finds her circumstances are better addressed under R865-19S-98 (E)(1).

The second is R865-19S-98 (B)(5). Under this portion of the rule, employees who commute from another state to work are exempt. Persons not commuting from another state, but who are engaged in a trade, profession, or occupation, or gainfully employed in Utah, do not qualify for the exemption. Petitioner argues her stipend of \$\$\$\$\$ per month from the COMPANY B did not mean she was gainfully employed. The Commission agrees. A three-month internship with a stipend of \$\$\$\$\$ per month is not gainful employment.

The parties also cited R865-19S-98 (E)(1). It says vehicles are deemed not used in the state beyond the necessity of transporting them to the borders if purchased by nonresident students permanently leaving the state within thirty days of purchasing the vehicle. Petitioner was an intern. She was not a student as that term is commonly used. However, she was an STATE 1 resident in Utah temporarily for the purpose of acquiring additional knowledge, skills, and training.

She left within thirty days of purchasing the vehicle. At the time of the purchase, Petitioner had no intention of returning to Utah. Thus, she qualifies for an exemption under R865-19S-98 (E)(1).

DECISION AND ORDER

Based on the foregoing, the Commission finds Petitioner qualifies for the exemption provided under §59-12-104(9). The Commission finds Petitioner is not liable to pay sales tax on the purchase of the vehicle. 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. 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

Appeal No. 06-0173

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

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