

06-0201  
Audit  
Signed 12/04/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>ORDER</b>	
	)		
Petitioner,	)	Appeal No.	06-0201
	)		
v.	)	Account No.	#####
	)		
AUDITING DIVISION OF THE	)	Tax Type:	Sales Tax
UTAH STATE TAX COMMISSION,	)		
	)	Periods:	July 2003
Respondent.	)		
	)	Judge:	Robinson

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**Presiding:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *pro se*, via telephone

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
RESPONDENT REPRESENTATIVE 2, 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 June 12, 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 on July 18, 2003. At the time of the purchase, Petitioner had a residence in STATE. He had a STATE driver's license. However, Petitioner also had a vehicle registered in Utah for his business, had a residence in Utah, and was employed in 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 \$\$\$\$\$ in interest.

On February 23, 2006, (postmark date) Petitioner filed a Petition for Redetermination. Petitioner said he told the dealer he was a resident of STATE with a STATE driver's license, but had a residence and business in Utah, and a vehicle registered in Utah. He also said he told the dealer he filed Utah taxes for his business.

Petitioner said he told the dealer he wanted to buy the vehicle from it because the model in COMPANY'S inventory was not readily available from the STATE dealer. He said if he would be required to pay sales tax, he would order the vehicle through the dealer in STATE.

COMPANY prepared a nonresident affidavit for sales tax exemption. Petitioner signed it on July 18, 2003. The copy introduced as evidence does not have a signature from the dealer. The motor vehicle contract of sale does not show any sales tax due to the State of Utah.

Petitioner said he knew he would not be in Utah more than seven to eight months after he bought the Subaru. He said the dealer knew Petitioner had a residence and a business in Utah, as well as a vehicle registered in Utah. He feels the dealer knew he did not qualify, but deceived him in order to make the sale.

Petitioner said he no longer owns the Subaru. He said he sold his residence in CITY in mid-2004. Petitioner filed a resident Utah income tax return for 2003.

APPLICABLE LAW IN EFFECT DURING THE AUDIT

Utah Code Section 59-10-103 (1) [effective until January 1, 2004]

(1) As used in this chapter:

.....

(p) "Resident individual" means:

(i) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or

(ii) an individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate 183 or more days of the taxable year in this state.

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

....

(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.

....

(10) 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;

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 person may not

1. be a resident of this state. That fact that a person leaves temporarily is not sufficient to terminate residency;
2. be engaged in intrastate business within this state;
3. maintain a vehicle with this state designated as the home state;
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;
6. allow the purchased vehicle to be kept or used by a resident of this state; or

.....

#### DISCUSSION

Petitioner does not dispute the applicability of the law to his circumstances. He was a legal resident of Utah, and filed a resident Utah income tax return for the 2003 tax year. While acknowledging he owes sales tax on the purchase of the vehicle, he requests a waiver of the penalty and interest based on the dealer's conduct.

While the dealer may have some responsibility, Petitioner signed an affidavit affirming things he acknowledges are not accurate. The circumstances do not warrant a waiver of the penalty.

The State of Utah did not have the time value of the money it should have received. Petitioner owes interest on the sales tax he should have paid to the State of Utah.

#### DECISION AND ORDER

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 denies Petitioner's request for a waiver of the penalty, \$\$\$\$\$. The Commission denies Petitioner's request for a waiver of interest. 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

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