

06-0348
Audit
Signed 10/23/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	06-0348
)		
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, *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 8, 2006. Petitioner is challenging the assessment of sales tax, penalty, and interest on his purchase of a motor vehicle.

Petitioner attended UNIVERSITY (UNIVERSITY) in the early part of 2003. He also worked at COMPANY A. He began working in STATE during his summer break. He had returned to CITY, Utah, to see his fiancée in May of 2003. During his visit, Petitioner purchased a vehicle from COMPANY B. At the time of the purchase, Petitioner was living and working in STATE. He had a STATE driver's license.

He returned to UNIVERSITY that fall, as he intended. He worked in the (X) at UNIVERSITY during the fall. In March of 2004, Petitioner filed a resident income tax return for the 2003 tax year.

On February 2, 2006, Respondent sent Petitioner an informal letter regarding the purchase of the vehicle. Petitioner responded by paying \$\$\$\$\$. Of that amount, \$\$\$\$\$ was tax, \$\$\$\$\$ was penalty, and \$\$\$\$\$ was interest. This constituted full payment.

On March 14, 2006, Respondent sent a statutory notice to Petitioner acknowledging receipt of his full payment. The notice also informed Petitioner he could appeal if he disagreed with the audit.

On March 22, 2006, Petitioner filed a Petition for Redetermination. Petitioner said he was a non-resident, and that the dealer told him to pay the tax in the state where he registered the vehicle. He said assessing penalty and interest imply willful disobedience when all he did was misunderstand an illogical law. He said he should not be charged penalty and interest for the dealer's lack of understanding of the law. He requests waiver of the penalty and interest, feeling that those giving him erroneous counsel should be responsible for the penalty and interest.

Respondent declined that request. It maintained the audit was correct. The Initial Hearing followed.

APPLICABLE LAW

Utah Code Section 59-10-103 (1) states, As used in this chapter:

.....

(t) (i) "Resident individual" means:

(A) 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

(B) an individual who is not domiciled in this state but:

(I) maintains a permanent place of abode in this state; and

(II) 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.

(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.

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.

....

(2) 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:

....

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

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

DISCUSSION

Petitioner filed a resident Utah tax return for the 2003 tax year. He was living in Utah for more than 183 days while attending school at UNIVERSITY, was employed in Utah during 2003, and used the vehicle in Utah after its purchase. Considering all of these factors, he did not qualify to purchase the vehicle exempt from Utah sales tax under §59-12-104 (9). Petitioner does not contest his liability for sales tax on the purchase of the vehicle.

Petitioner's account regarding the sale suggests COMPANY B knew, or should have known, that Petitioner did not qualify to purchase the vehicle as a non-resident. RESPONDENT REPRESENTATIVE 1 stated the dealer should have known a UNIVERSITY student who was returning in the fall would be liable for the tax.

Petitioner appears to have acted in good faith, relying on COMPANY B's advice he should pay sales tax where he registered the vehicle. He was not negligent in failing to pay the sales tax to Utah.

Petitioner had the time value of the money he should have paid to the State of Utah. Thus, Petitioner owes interest on the unpaid sales tax.

DECISION AND ORDER

Based on the foregoing, the Commission finds Petitioner does not qualify for the exemption provided under §59-12-104 (9). Thus, he is responsible to pay sales tax on the purchase of his vehicle. Petitioner did not contest his liability to pay the sales tax on the purchase.

Petitioner acted in good faith when he relied on the representations made by the dealer concerning payment of sales tax to the state where he registered the vehicle. This is sufficient to support a waiver of the penalty in this case.

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

Based on the foregoing, the Commission finds Petitioner is liable to pay sales tax on the purchase of vehicle in the amount of \$\$\$\$\$, which he has paid. The Commission grants Petitioner's request for a waiver of the penalty, \$\$\$\$\$. This amount is to be refunded to Petitioner. The Commission denies Petitioner's request for a waiver of interest on the purchase price. 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

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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

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

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Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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