

06-0882
SALES TAX
SIGNED: 02-14-2007
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)		
Petitioner,)	ORDER	
)		
v.)	Appeal No.	06-0882
)		
TAXPAYER SERVICES DIVISION)	Tax Type:	Sales Tax
OF THE UTAH STATE)		
TAX COMMISSION,)	Judge:	Chapman
)		
Respondent.)		

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER (by telephone)
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, from the Taxpayer Services Division
RESPONDENT REP. 3, from the Taxpayer Services Division

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 February 1, 2007.

On April 24, 2006, the Petitioner requested a refund of \$\$\$\$\$ in sales tax he had paid on his March 8, 2005 purchase of a motor vehicle from DEALERSHIP of CITY 1, Utah. On June 6, 2006, Taxpayer Services Division (the "Division") mailed the Petitioner a Statutory Notice in which it refunded the sales tax in part and denied the refund in part. The Division refunded \$\$\$\$\$ of sales tax, plus interest, because the dealer

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had erroneously charged sale tax on the manufacturer's rebate of \$\$\$\$.¹ However, the Division denied a refund of the remaining \$\$\$\$ in sales tax that the dealer had collected on the taxable sales amount of \$\$\$\$.

On June 16, 2006, the Petitioner submitted a Petition for Redetermination, asking the Commission to refund the remaining \$\$\$\$ in sales tax he had paid on the transaction.

Background Information. The Petitioner purchased a FIRST VEHICLE from DEALERSHIP ("first vehicle") on March 8, 2005. This issue before the Commission concerns the sales tax paid on this transaction. Soon after the Petitioner took possession of the first vehicle, it began to malfunction. The Petitioner contacted the Utah Division of Consumer Protection, which told him that a dealer had to be given at least four opportunities to correct a problem before Utah's "Lemon Laws" (UCA §13-20-1 to -7) took effect. When the dealer could not correct the first vehicle on the fifth attempt, the Petitioner proffers that he told the dealer to fix it or give him his money back.

The dealer offered to take back the defective first vehicle and give the Petitioner a new vehicle ("second vehicle") with an additional warranty if the Petitioner paid a \$\$\$\$ difference. The Petitioner and dealership finally agree to terms where the Petitioner would pay an additional \$\$\$\$.

On June 17, 2005, the Petitioner went to the dealership and exchanged the first vehicle for the second vehicle. He noticed, however, that the contract the dealership asked him to sign was drawn up to show that he was purchasing a new vehicle with a trade-in, which did not reflect the exchange he had negotiated. Upon protesting to the dealership, the Petitioner was told that the dealership had to draw up the contract that way. The Petitioner signed the documents and received the second vehicle. The documents show that the dealership charged the

¹ Utah Code Ann. §59-12-104(60) specifically exempts from sales and use tax "amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle for purchasing the new vehicle[.]" Prior to the exemption being enacted into statute, Utah Admin. Rule R865-19S-68(F) (since repealed) provided that such rebates were nontaxable if separately stated.

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Petitioner \$\$\$\$ in sales tax for this second transaction, erroneously charging sales tax on the manufacturer's rebate of \$\$\$\$.

The Petitioner soon found out that the second vehicle was also defective. On November 21, 2005, CAR MANUFACTURER agreed to reimburse the Petitioner for the all amounts he had paid for the second vehicle, including the \$\$\$\$ in sales tax erroneously paid.

The Petitioner argues that had the dealership written up the June 17, 2005 documents to show that he was returning the defective first vehicle and exchanging it for the new second vehicle, the sales tax he paid on first vehicle would have also been refunded. Because he had very little use of the first vehicle due to its defects and because the dealership refused to write up the June 17, 2005 documents as he had negotiated, the Petitioner asks the Commission to refund him the sales tax he paid in regards to the first vehicle. The Petitioner also points out that this is his only recourse, as he has already taken the dealership to small claim's court and lost because he signed the June 17, 2005 documents that the dealership insisted he sign.

The Division, on the other hand, points out that sales tax is a "transactional" tax, as set forth in UCA §59-12-103(1) and Utah Admin. Rule R865-19S-2("Rule 2"). Because the June 17, 2005 documents were not drawn up as a "return" of the first vehicle, but as the purchase of the second vehicle with the first vehicle characterized as a "trade-in," the Division argues that the purchase of the first vehicle remains a separate transaction that is subject to sales and use tax. For these reasons, the Division asks the Commission to sustain its denial of the remainder of the sales tax that the Petitioner requests to be refunded.

APPLICABLE LAW

UCA §59-12-103 provides for the imposition of sales and use tax on certain transactions, as follows in pertinent part:

(1) 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;

....

Utah Admin. Rule R865-19S-2 provides guidance concerning Utah's sales and use tax and provides, as follows:

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

Utah Admin. Rule R865-19S-20(C) ("Rule 20") provides that a seller filing its sales and use tax return can adjust the amount of "total sales," as follow: "Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts that result from sales upon which the tax has been reported and paid in full by a seller to the Tax Commission."

Utah Admin. Rule R865-19S-72 addresses exchanges and trade-ins, including their application to motor vehicle transactions, as follows:

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any consideration valued in money which changes hands.

B. For example, if a car is sold for \$8,500 and a credit of \$6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or \$2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

DISCUSSION

The Petitioner's March 8, 2005 purchase of the first vehicle was a taxable purchase of tangible personal property and, thus, subject to sales and use tax. The Petitioner exchanged the first vehicle for a second vehicle on June 17, 2005. Had the June 17, 2005 paperwork shown that the purchaser "returned" the first vehicle, the transaction would have been considered "voided" and the sales tax the Petitioner paid on the purchase of the first vehicle could be refunded. The Commission notes that the Petitioner was refunded the full amount of sales tax he paid on the purchase of the second vehicle because Utah's Lemon Laws provide that a manufacturer who accepts a return of a "lemon" vehicle must "refund to the consumer the full purchase price including [sales tax], less a reasonable allowance for the consumer's use of the vehicle." See UCA §13-20-4; Utah Admin. Rule R152-20-2.

However, when the purchaser "exchanged" the first vehicle for the second vehicle, the dealership did not draw up, and the Petitioner did not sign, documents to reflect a "return" of the first vehicle. Instead, the June 17, 2005 documents reflect a "trade-in" of the first vehicle on the purchase of the second vehicle. Rule 72 does not provide for a refund of the sales tax paid for a vehicle that is subsequently traded in on another vehicle. For these reasons and because sales and use tax is a tax on the transaction and is not a tax on the item purchased, the Commission finds that Utah law does not provide, under these circumstances, for a refund of the additional \$\$\$\$ of sales tax, as requested by the Petitioner. Accordingly, the Commission sustains the Division's action and denies the Petitioner's appeal.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's denial of the Petitioner's refund request. Accordingly, the Petitioner's appeal is denied. It is so ordered.

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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 _____, 2007.

Kerry R. Chapman
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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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