

08-1885
AUDIT
SIGNED 05-15-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 08-1885

Account No. #####

Tax Type: Audit – Sales Tax

Tax Year: 2007

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER, *Pro Se*

For Respondent: RESPONDENT REP 1, Assistant Attorney General
RESPONDENT REP 2, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on November 25, 2008. The Petitioner (“Taxpayer”) is appealing the assessment of sales tax in the amount of \$\$\$\$ and interest in the amount of \$\$\$\$ as of September 4, 2008. Interest continues to accrue on the unpaid balance.

APPLICABLE LAW

Sales tax is imposed on certain transactions as set forth in Utah Code Ann. §59-12-103, below in relevant 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 Code Ann. §59-12-103 (2007)

If a vehicle was purchased from someone other than a licensed vehicle dealer, the purchaser pays the sales tax directly to the Commission, as set forth in Utah Code Ann. §59-12-107(4), below:

- (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to titling or registration under the laws of this state.
- (b) The commission shall collect the tax described in Subsection (4)(a) when the vehicle is titled or registered.

Utah Code Ann. §59-12-107(4) (2007).

Penalties are imposed for the underpayment of tax under Utah Code Ann. §59-1-401(7), set forth below in pertinent part:

- (a) Additional penalties for underpayments of tax are as provided in this Subsection (7)(a)...
 - (iv) If the underpayment is due to fraud with intent to evade the tax, the penalty is the greater of \$500 per period or 100% of the underpayment.

Utah Code Ann. §59-1-401(7) (2007).

Section 59-1-402(5) of the Utah Code provides, “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.” Utah Code Ann. §59-1-402(5) (2007).

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(13) of the Utah Code provides, “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. §59-1-401(13) (2007).

DISCUSSION

On or about September 22, 2007, the Taxpayer purchased a 1990 Toyota 4Runner. The purchase price of the vehicle was \$\$\$\$\$. The Taxpayer testified that he is a paint contractor, and purchased the vehicle as a work truck. After he purchased the vehicle, he parked it in his garage, and performed some minor repairs and a tune-up. He estimated that he spent \$\$\$\$\$ - \$\$\$\$\$ on the repairs. Taxpayer determined that the vehicle would not work for his purposes because the bed of the truck was not separated from the front seats. Taxpayer then placed an ad in the paper, and sold the vehicle for \$\$\$\$\$ in the spring of 2008. Taxpayer never registered the vehicle because he did not drive it during the time he owned it.

The Division's representative stated that sales tax is a transactional tax, and the Taxpayer's liability was triggered by his purchase of the vehicle in September of 2007. The Division's representative stated that Utah Code Ann. §59-12-103 imposes a tax on the sale of tangible personal property; and that under Utah Code Ann. §59-12-107(4)(a), the tax would have been paid at the time Taxpayer registered the vehicle. It is the Division's position that the Taxpayer made a mistake, and was not attempting to commit fraud, or purposefully avoid paying the tax liability, and therefore it did not assess any penalties. However, the Division argued, the Taxpayer is obligated to pay the tax on the transaction, and asked that the audit assessment be sustained.

Utah Code Ann. §59-12-103 imposes sales tax on the purchase of tangible personal property. Taxpayer's purchase of the 1990 Toyota 4Runner triggered the tax liability on the transaction. Typically, under Utah Code Ann. §59-12-107(4), the tax liability would be paid when the vehicle was registered. However, the Taxpayer did not register the vehicle. The Taxpayer has not shown that he purchased the vehicle for an exempt purpose, and was not liable for the sales tax. In fact, Taxpayer's stated purpose for purchasing the vehicle was for use as a work truck. Under the circumstances, the Commission sustains the assessment of sales tax in the amount of \$\$\$\$\$.

Taxpayer has also requested a waiver of interest. Under Utah Code Ann. §59-1-402(5), interest is assessed from the time tax is due until it is paid. The Commission is granted discretion to waive penalties and interest under Utah Code Ann. §59-1-401(13). The Commission has issued Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs>, which sets forth the factors the Commission may consider in determining whether "reasonable cause" exists for the waiver of penalties or interest. Publication 17 provides, "[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the Tax Commission gave you erroneous information or took inappropriate action that contributed to the error." The Taxpayer has not shown any Tax Commission error, or that a Tax Commission employee provided erroneous information. Therefore, the Commission finds the Taxpayer has not shown reasonable cause for the waiver of interest.

DECISION AND ORDER

Based on the foregoing, the Commission finds that the tax liability was properly assessed, and that Taxpayer has not shown reasonable cause for a waiver of interest. Therefore, the Commission sustains the audit assessment. 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

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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 _____, 2008.

Jan Marshall
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 _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

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