

08-1941  
Audit  
Signed 12-04-08

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

v.

AUDITING DIVISION OF THE UTAH  
STATE TAX COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 08-1941

Account No. #####

Tax Type: Audit – Sales Tax

Tax Year: 2007

Judge: Marshall

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**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

RESPONDENT REP 3, 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 18, 2008. The Taxpayer requested a waiver of the 100 % fraud penalty in the amount of \$\$\$\$ assessed as the result of a sales tax audit on the purchase of a vehicle. The Taxpayer was assessed \$\$\$\$ in additional tax, a 100% fraud penalty, and interest, which continues to accrue.

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)

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 \$\$\$\$\$ 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 October 30, 2007, Taxpayer purchased a 2005 Jeep Wrangler. Taxpayer testified that the purchase price of the vehicle was \$\$\$\$\$. The bill of sale reflects a purchase price of \$\$\$\$\$ and the title reflects a purchase price of \$\$\$\$\$. When Taxpayer registered the vehicle, he paid sales tax on a \$\$\$\$\$ purchase price, rather than the actual purchase price of \$\$\$\$\$.

Taxpayer does not dispute the tax liability, but disputes the characterization of the transaction as “fraud,” and believes the amount of the penalty is too high. Taxpayer acknowledged at the hearing that he wrote a sales price of \$\$\$\$\$ on the certificate of title. He explained that he was excited because this was the newest vehicle he had ever purchased. Upon questioning, the Taxpayer stated that he was aware there would be sales tax on the transaction but he was unsure of what that would be, or how it was calculated.

It is the Division’s position that the Taxpayer did not make a “mistake” in writing a sales price of \$\$\$\$\$ on the certificate of title, knowing that the purchase price was \$\$\$\$\$ higher. The Division submitted a copy of the certificate of title, which clearly shows a purchase price of \$\$\$\$\$. Additionally, the Division provided a copy of the Bill of Sale signed by ( X ), indicating a sales price of \$\$\$\$\$. The Division asked that the penalty be sustained, noting that Utah Code

Ann. §59-1-401(7) provides for a penalty in the greater of \$500 or 100% of the under payment of tax.

Utah Code Ann. §59-1-401(7) provides for a penalty the greater of \$500 or 100% of the underpayment of tax if the underpayment of tax is due to fraud with intent to evade the tax liability. The Commission finds the Taxpayer's acknowledgement, coupled with the bill of sale prepared by the seller persuasive to determine that Taxpayer intended to evade the payment of sales tax when he wrote a sales price of \$\$\$\$ on the certificate of title.

DECISION AND ORDER

Based on the foregoing, the Commission finds that sufficient cause has not been shown to justify a waiver of the fraud penalty, and 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 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

Appeal No. 08-1941

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.

*JM/08-08-1941.int*