

09-1057
REFUND REQUEST
SIGNED 06-01-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-1057

Account No. N/A

Tax Type: Refund Request

Tax Year: 2009

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, Motor Vehicle 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 April 28, 2009. The Taxpayer requested refund of the sales tax and registration fees he incurred on the purchase and registration of a motor vehicle. Taxpayer paid \$\$\$\$ in sales tax, and various registration fees for a total of \$\$\$\$.

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 (2008).

Additional information on the nature of sales tax is provided in Administrative Rule R865-19S-2, below:

- 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. Code R861-19S-2 (2008).

On the purchase of a vehicle from someone other than a licensed vehicle dealer, sales tax is paid 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) (2008).

Utah Code Ann. §59-12-110(2) provides for a refund of the overpayment of sales tax, below in pertinent part:

- (f) A taxpayer may obtain a refund under this Subsection (2) of a tax paid under this chapter on a transaction that is taxable under Section 59-12-103 if:
 - (i) the sale or use was exempt from sales and use taxes under Section 59-12-104 on the date of purchase; and
 - (ii) except as provided in Subsection (2)(c), the taxpayer files a claim for a refund with the commission as provided in Subsections (2)(b) through (e).

Utah Code Ann. §59-12-110(2).

Utah Code Ann. §41-1a-201 prohibits the operation of a motor vehicle in the State of Utah unless it has first been registered, as set forth below:

Unless exempted, a person may not operate and an owner may not give another person permission to operate a motor vehicle, combination of vehicles, trailer, semitrailer, vintage vehicle, off-highway vehicle, or vessel in this state unless it has been registered in accordance with this chapter, Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act.

Utah Code Ann. §41-1a-201 (2008).

Registration of a vehicle is for a period of 12 months, as set forth in Utah Code Ann. §41-1a-215, below in pertinent part:

- (1) (a) Except as provided under Subsection (2) and (3), every vehicle registration, every registration card, and every registration plate issued under this chapter for the first registration of the vehicle in this state, continues in effect for a period of 12 months beginning with the first day of the calendar month of registration and does not expire until the last day of the same month in the following year.

Utah Code Ann. §41-1a-215 (2008).

An application for a refund may be made to the Division under Utah Code Ann. §41-1a-1203, set forth below:

If the division through error collects any fee not required to be paid, the fee shall be refunded to the person paying the fee upon written application for a refund made within six months after date of the payment.

Utah Code Ann. §41-1a-1203 (2008).

DISCUSSION

Taxpayer has requested a refund of the sales tax and registration fees on a 2001 Ford truck. Taxpayer registered the vehicle, paying the tax and fees, on January 5, 2009. The next day, taxpayer was involved in an automobile accident and the vehicle was totaled. Taxpayer believes it is not fair that he pay the tax and registration fees when he only had use of the vehicle for one day. Taxpayer provided copies of his receipt for payment of the tax and registration fees as well as a letter from Progressive Insurance showing the date of loss as January 6, 2009 and that the vehicle was a total loss.

The Division's Answer to Petition for Redetermination sets forth its position that because sales tax is a transactional tax that is charged on the sale of the vehicle. It is the Division's position that Taxpayer was required to pay the sales tax when the vehicle was titled and registered under Utah Code Ann. §59-12-107(4). The Division's representative stated that Taxpayer was not entitled to a refund of the registration fees because under Utah Code Ann. §41-1a-215, the registration period lasts for a full year, and there is no provision to allow for a refund if the vehicle is used for less than a year.

Sales tax is a transactional tax on the sale of tangible personal property, as explained in Rule R865-19S-2. Utah Code Ann. §59-12-107(4) requires taxpayers to pay the sales tax to the

Commission when the vehicle is titled and registered. A refund of sales tax is allowed under Utah Code Ann. §59-12-110(2)(f), if the sale or use was exempt from sales and use tax under Section 59-12-104 on the date of purchase. The Taxpayer has provided no testimony or other evidence to show that the purchase was exempt from sales tax. Rather, the Taxpayer is requesting a refund because he was not able to use the vehicle because it was totaled in an accident the day after he paid the sales tax. The Commission finds the Taxpayer has not shown the purchase to be exempt, and therefore a refund of the sales tax cannot be issued.

Taxpayer was required under Utah Code Ann. §41-1a-201 to register the vehicle prior to operating it within the State of Utah. Under §41-1a-215, the registration of a vehicle is for a period of twelve months. Utah Code Ann. §41-1a-1203 provides that a fee shall be refunded if the Division erroneously collects a fee that was not required to be paid, and the request is made within six months of payment. The Taxpayer was required to register the vehicle in order to operate it in the State of Utah, therefore the registration fees were not collected in error, and cannot be refunded.

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer's request for a refund of both sales tax and registration fees. 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 _____, 2009.

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 _____, 2009.

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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