

09-1612
MOTOR VEHICLE
SIGNED 08-03-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-1612

Account No. ##### -1 and ##### -2

Tax Type: Registration Fees

Tax Year: 2009

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER REP, Managing Partner

For Respondent: RESPONDENT REP 1, Assistant Attorney General

RESPONDENT REP 2, Motor Vehicle Division

RESPONDENT REP 3, 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 June 17, 2009. The Taxpayer is appealing the registration fees assessed on two hot air balloons, ##### -3 and ##### -4.

APPLICABLE LAW

Effective January 1, 2009, a uniform fee on aircraft is assessed in accordance with Utah Code Ann. §59-2-404, set forth below:

- (1) In accordance with Utah Constitution Article XIII, Section 2, Subsection (6), beginning on January 1, 2009, an aircraft, required to be registered with the state is:
 - (a) exempt from the tax imposed by Section 59-2-103; and
 - (b) in lieu of the tax imposed by Section 59-2-103, subject to a uniform statewide fee of \$25.
- (2) (a) The uniform fee shall be collected by the commission with the registration fee and distributed to the county in which the aircraft is based.

- (b) A based aircraft is an aircraft which is hangared, tied down, or parked at the airport for a plurality of the year.
- (3) (a) The uniform fees received by a county under Subsection (2) shall be distributed to each taxing entity within the county in the same proportion in which revenues collected from the ad valorem property tax are distributed.
 - (b) Each taxing entity described in Subsection (3)(a) that receives revenues from the uniform fee imposed by this section shall distribute the revenues in the same proportion in which revenues collected from the ad valorem property tax are distributed.
- (4) The commission shall promulgate rules to implement this section.

Utah Code Ann. §59-2-404 (2008).

Effective January 1, 2009, a registration fee is assessed on aircraft in accordance with Utah Code Ann. §72-10-110, set forth below, in pertinent part:

- (2) (a) Except as provided in Subsection (3), at the time application is made for registration or renewal of registration of an aircraft under this chapter, an annual registration fee of 0.4% of the average wholesale value of the aircraft shall be paid.
 - (b) For purposes of calculating the value of the aircraft under Subsection (2)(a) or (3)(d), the Tax Commission shall use the average wholesale value as stated in the Aircraft Bluebook Price Digest.
- (3) (a) Notwithstanding Subsection (2), the following aircraft shall pay an annual registration fee of \$100:
 - (i) an aircraft not listed in the Aircraft Bluebook Price Digest; or
 - (ii) an experimental aircraft.
- (b) Notwithstanding Subsection (2), an aircraft 50 years or older shall pay the lesser of
 - (i) \$100; or
 - (ii) the uniform fee provided for under Subsection (2)(a).
- (c) Notwithstanding Subsection (2), an aircraft that does not have a valid airworthiness certificate for a period of six months or more:

- (i) may not apply for a certificate of registration required under Section 72-10-109; and
- (ii) is exempt from paying a registration fee until the aircraft has a valid airworthiness certificate.
- (d) Notwithstanding Subsection (2), an aircraft shall pay an annual registration fee of .25% of the average wholesale value of the aircraft if:
 - (i) used by an air charter service for air charter; and
 - (ii) owned by a person other than the air charter service.

Utah Code Ann. §72-10-110 (2008).

DISCUSSION

Taxpayer is appealing the registration fees assessed pursuant to Utah Code Ann. §72-10-110 on hot air balloons ##### -3 and##### -4. He does not contest the \$25 uniform fee assessed under Utah Code Ann. §59-2-404. Taxpayer argued that the valuation methodology is flawed because the Aircraft Bluebook Price Digest does not track all aircraft. He testified that he spoke with Utah State Senator Curt Bramble, and that the intention of the law is not as it is written.

Taxpayer stated that the Tax Commission previously established a value of \$\$\$\$ for balloon ##### -3, and provided a copy of Schedule 1 of an unreported aircraft purchase audit. He argued that using that value, the registration fee would be \$\$\$\$, based on the 0.4% assessment value in Utah Code Ann. §72-10-110. He testified that the registration fee for balloon ##### -4 would be even less because it is older and has more hours on it.

The Division's representative argued that Utah Code Ann. §72-10-110 and §59-2-404 were amended by House Bill 365 in the General Session of the Utah Legislature. These changes impose a flat \$25 fee in lieu of ad valorem tax and a registration fee determined by the average wholesale value stated in the Aircraft Bluebook Price Digest. The Division's representative argued that because hot air balloons are not listed in the Aircraft Bluebook Price Digest, the \$100 fee set forth in Utah Code Ann. §72-10-110(3)(a)(i) is appropriate.

Taxpayer does not dispute the \$25 uniform fee assessed in accordance with Utah Code Ann. §59-2-404. Rather, Taxpayer contests the registration fee as assessed on hot air balloons #####-3 and ##### -4 pursuant to Utah Code Ann. §72-10-110. Subsection (2) of Utah Code Ann. §72-10-110 provides for an annual registration fee of 0.4% of the average wholesale value of an aircraft. However, Subsection (3) specifically provides that notwithstanding Subsection (2), an annual registration fee of \$100 is assessed on aircraft not listed in the Aircraft Bluebook Price Digest. It is undisputed that hot air balloons are not included in the Aircraft Bluebook Price Digest. Thus, despite Taxpayer's understanding of Senator(X)'s interpretation of the statute,

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the plain language requires an annual registration fee of \$100 for each of the hot air balloons at issue.

DECISION AND ORDER

Based on the foregoing, the Commission denies Taxpayer’s appeal, and sustains the registration and uniform fees as assessed for balloon numbers ##### -3 and ##### -4. 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:

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.