

09-1986
AUDIT
SIGNED 09-24-2009

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-1986

Account No. #####

Tax Type: Audit – Sales Tax

Tax Year: 11/06

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
RESPONDENT REP 3, Auditing Division
RESPONDENT REP 4, 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 August 12, 2009. The Taxpayer disputes the assessment of sales tax and interest on the purchase of a 2006 Can-Am 800 Outland. As of March 16, 2009, Taxpayer was assessed \$\$\$\$ in tax, and interest in the amount of \$\$\$\$.

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 (2006).

An exemption from sales and use tax is allowed if an item of tangible personal property is used in a farming operation, as set forth in Utah Code Ann. §59-12-104(18), below:

- (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property or a product transferred electronically used or consumed primarily and directly in farming operations, regardless of whether the tangible personal property or product transferred electronically:
 - (A) becomes part of real estate; or
 - (B) is installed by a:
 - (I) farmer;
 - (II) contractor; or
 - (III) subcontractor; or
- (ii) sales of parts used in the repairs or renovations of tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is exempt under Subsection (18)(a)(i); and

Utah Code Ann. §59-12-104(18) (2006).

The Commission has issued Administrative Rule R865-19S-49 to provide additional information on sales to farmers and other agricultural producers, as set forth below in pertinent part:

- (1) (a) For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Section 162 or 212, Internal Revenue Code.
- (b) To determine whether a person may deduct farm related expenses under Section 162 or 212 of the Internal Revenue code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

Utah Admin. Code R865-19S-49 (2006).

DISCUSSION

Taxpayer purchased a 2006 Can-Am 800 Outland on or about November 30, 2006 for \$\$\$\$\$. Taxpayer submitted an Exemption Certificate as an agricultural producer. Based upon that certificate, Taxpayer did not pay sales tax upon the purchase of the vehicle. The Division issued a Statutory Notice on March 16, 2009 assessing tax in the amount of \$\$\$\$\$ and interest in the amount of \$\$\$\$\$. No penalties were assessed on the failure to pay the sales tax.

Taxpayer purchased land in Sevier County in 1994. He intended to grow (X) on the property. As of the hearing date, Taxpayer had not planted any (X) crops. He testified that the

land has been disked and leveled. He stated that the topography makes it difficult to use flood irrigation, and that he is in the process of installing a sprinkler system. He stated that he did not file a Schedule F with his federal return because his accountant told him he could not without an “in service” date.

In the documents submitted by the Taxpayer prior to the hearing, he asked that he be considered for a hardship. He stated that he needs the ATV to aid in his upkeep of the land in order to obtain an “in service” date. He explained that he was injured in 2006 in a bicycle accident, and that he currently collects Social Security disability.

The Division provided copies of the audit summary, the invoice, Exemption Certificate, and federal transcripts for the 2006 tax year. The Division’s representative argued that to be entitled to the exemption under Utah Code Ann. §59-12-104(18), the Taxpayer must be engaged in “farming operations.” The Division’s representative also noted that under Administrative Rule R865-19S-49, a person is engaged in farming operations if they can deduct expenses under Section 162 or 212 of the Internal Revenue Code. The Division’s representative argued that under federal regulations in order to deduct expenses, a taxpayer has to be conducting a trade or business, and that Taxpayer has not offered any evidence or testimony that he is operating a trade or business. He further argued that Taxpayer does not fall into the safe harbor provisions of the federal regulations. It is the Division’s position that Taxpayer is not operating a trade or business, has not shown that he has ever been involved in farming operations, and therefore is not entitled to the exemption.

Taxpayer does own agricultural property, but is not an agricultural producer. He testified that he does intend to grow (X), and has been preparing the land so that it can be farmed. Taxpayer did not file a Schedule F, Farm Income and Expense Statement. The Commission finds that the Taxpayer is not a person engaged in “farming operations”, and was not engaged in farming operations at the time the ATV was purchased. Thus, the Commission finds the purchase of the ATV was not exempt from taxation.

The Taxpayer’s submissions request that he be considered for a hardship case. The Commission generally does not consider hardship as grounds for a waiver of tax, penalties, or interest through the appeal process. However, the Commission has established the “Offer in Compromise” program in the event that a taxpayer is experiencing financial hardship and does not have the ability to pay any unpaid portion of tax, penalty, and interest. The Commission does not know whether Taxpayer qualifies for the Offer in Compromise program, he would need to contact the Taxpayer Services Division directly at (801) 297-7703.

DECISION AND ORDER

Based on the foregoing, the Commission finds that the purchase of the ATV by Taxpayer in 2006 was not exempt from taxation, and is subject to sales tax. Therefore, the Commission sustains the Division's audit. 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.