

10-0358
AUDIT
TAX YEAR: 2006
SIGNED: 01-03-2011
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 10-0358 Account No. ##### Tax Type: Audit – Sales Tax Tax Year: 2006 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

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 October 5, 2010. The Taxpayer is appealing the findings of a sales and use tax audit for the 2006 tax year. The Taxpayer was assessed additional tax in the amount of \$\$\$\$\$, and interest in the amount of \$\$\$\$\$. Interest continues to accrue on any unpaid balance.

APPLICABLE LAW

Sales tax is imposed on certain transactions as set forth in Utah Code Ann. §59-12-103¹, below in relevant part:

¹ The Commission cites to the code sections that were in effect in 2006, the tax year at issue.

- (1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:
 - (l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:
 - (i) stored;
 - (ii) used; or
 - (iii) otherwise consumed...

Utah Code Ann. §59-12-104 exempts certain transactions from sales and use tax as follows:

The following sales and uses are exempt from the taxes imposed by this chapter:

- (24) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase.

Utah Code Ann. §59-12-107 requires the payment of use tax under certain circumstances, set forth below:

- (c) A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if:
 - (i) the seller did not collect a tax imposed by this chapter on the transaction; and
 - (ii) the person:
 - (A) stores the tangible personal property in the state;
 - (B) uses the tangible personal property in the state; or
 - (C) consumes the tangible personal property in the state.

Utah Code Ann. §59-1-402(5) 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.”

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.”

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

- (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the

burden of proof is on the petitioner...”

DISCUSSION

Taxpayer was a domiciliary and a resident of the State of STATE 1 for the 2006 tax year. On or about DATE, Taxpayer contracted with COMPANY 1, a STATE 2 company, for the purchase of a “PACKAGE” that included all exterior and interior elements in accordance with construction drawings for a log home. Pursuant to the sales contract, “delivery shall be F.O.B. the log yard in PROVINCE for handcrafted Log Structures and elements”. The contract further specifies the Taxpayer shall pay the trucking company directly to move the “PACKAGE” to CITY 1, Utah. Taxpayer did not pay sales tax in either STATE 2 or COUNTRY 1.

Taxpayer argues that he is exempt from tax under Utah Code Ann. §59-12-104(24). He stated that he is not a Utah resident, and that the “PACKAGE” was paid for in STATE 2 and shipped to COUNTRY 1, where he first “used” it, and the property was not used for conducting business in Utah. Taxpayer stated argued that the logs were assembled into the cabin in COUNTRY 1 to make sure all of the pieces fit together before being shipped to Utah, but argued “use” also means ownership and liability. The Taxpayer testified that he had hired workers to construct the cabin in Utah, as well as purchased lumber and other materials to finish the cabin.

The Taxpayer further argued that he has been harmed in the audit process, and believes he has been treated unfairly. He stated that tax liens have been filed that damaged his credit and affected the interest rate when he refinanced properties. Taxpayer indicated that it took seven months to get a response from the Division on the audit. He stated that he had offered to pay one-half of the tax liability in an effort to settle the matter, and questioned the Division on why his offer was not accepted.

The Division’s representative argued that tax should be assessed pursuant to Utah Code Ann. §59-12-103 on the “PACKAGE” because it was “stored, used, or otherwise consumed” in Utah. He stated that it does not appear that sales tax has ever been paid on the transaction, either to STATE 2 or COUNTRY 1, and thus under Utah Code Ann. §59-12-107, the Taxpayer is required to pay the tax to the state of Utah.

The Division’s representative stated that Taxpayer has the burden of proof to show that he qualifies for the exemption under Utah Code Ann. §59-12-104(24). The Division argued that Taxpayer does not qualify under the code section, and cited to the current version, which reads as follows:

The following sales and uses are exempt from the taxes imposed by this chapter:
(24) (a) purchase of property if:

- (i) the property is:
 - (A) purchased outside of this state;
 - (B) brought into this state;
 - (I) at any time after the purchase described in Subsection (24)(a)(i)(A);and
 - (II) by a nonresident person who is not living or working in this state at the time of purchase;
 - (C) used for the personal use or enjoyment of the nonresident person described in Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state;
 - (D) not used in conducting business in this state; and
- (ii) for:
 - (A) property other than the property described in Subsection (24)(a)(ii)(B), the first use of the property for a purpose for which the property is designed occurs outside of this state...

The Division's representative did not dispute that Taxpayer purchased the property outside of Utah, was a non-resident who brought the property into the state, that the "PACKAGE" was used for personal use or enjoyment; and was not used in conducting business in the state. However, the Division's representative disagrees with Taxpayer that the first use of the property occurred in COUNTRY 1. The Division's representative argued that the "purpose for which the property is designed" was to be assembled into a cabin and used as a shelter. The Division's representative asked for direction from the Commission on this issue.

With regard to the Taxpayer's offer to settle the audit by paying one-half of the assessed tax, the Division's representative stated that the offer was rejected because the greater issue is whether or not the law applies in this case. He indicated that interest was assessed pursuant to statute, but that no penalties were assessed.

Utah Code Ann. §59-12-103(1)(l) imposes tax on the purchaser if within the State of Utah the purchased goods are stored, used, or otherwise consumed. Utah Code Ann. §59-12-107 requires a person to pay the tax to the Tax Commission if it was not collected by the seller at the time of the transaction. There is no question that the "PACKAGE" is being used or otherwise consumed in the State of Utah. At issue is whether the transaction is exempt from tax under Utah Code Ann. §59-12-104(24).

It should be noted that both the Taxpayer and the Division referred to and relied upon the current version of Utah Code Ann. §59-12-104(24), which includes additional elements. The parties were particularly concerned with Subsection (24)(a)(ii)(A), which provides, "the first use of the property for a purpose for which the property is designed occurs outside of this state". The Division has asked the Commission for guidance on this issue. The Taxpayer argued that the first "use" occurred in COUNTRY 1 when the "PACKAGE" was assembled for the purpose of

Appeal No. 10-0358

ensuring the logs all correctly fit together. Taxpayer further argued that “use” included “ownership and liability”. The Division’s representative stated that the statute requires the first “use” be for a purpose for which the property is designed, and argued that would be for the construction of the cabin. The Commission agrees with the Division’s interpretation of the statute in this instance. A dry fit of the logs is arguably part of the manufacturing process of the “PACKAGE”. The “purpose for which the property is designed” would be to serve as a cabin that would be converted to real property and inhabited. Were the facts of this appeal governed by the current version of Utah Code Ann. §59-12-104(24), the transaction would not qualify for the exemption.

The sale and purchase contract was dated DATE. For the 2006 tax year, Utah Code Ann. §59-12-104(24) provided, “property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase” was exempt from sales and/or use tax. Taxpayer was a resident of the State of STATE 1 at the time he entered into the sales contract. The delivery of the “PACKAGE” was “F.O.B. the log yard in PROVINCE”. Taxpayer separately paid freight to have the “PACKAGE” delivered to CITY 1, Utah, where the “PACKAGE” was constructed into the cabin. There has been no evidence presented that would suggest the “PACKAGE” or cabin was for any use other than Taxpayer’s personal use and enjoyment. The transaction at issue meets the elements of the 2006 version of the statute, and should be exempt.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission reverses the audit assessment of additional tax and interest. 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

Appeal No. 10-0358

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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.

JM/10-0358