

10-1969
AUDIT
TAX YEAR: 2008
SIGNED: 08-11-2011
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 10-1969</p> <p>Account No. ##### Tax Type: Audit – Sales Tax Tax Year: 2008</p> <p>Judge: Jensen</p>
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearing:

For Petitioner: TAXPAYER, Taxpayer
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, for the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on February 14, 2011 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (the “Taxpayer”) disputed the imposition of tax, penalty, and interest assessed as the result of a sales tax audit on a title transfer for a vehicle. On May 24, 2010, the Auditing Division of the Utah State Tax Commission (the “Division”) assessed the Taxpayer sales tax on what the Division considered a sale of a vehicle for a purchase price of \$\$\$\$\$.

APPLICABLE LAW¹

Utah law imposes a sales tax on the purchaser for amounts paid or charged for:

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

- (i) stored;
- (ii) used; or

¹ Utah law had changes, not material to the outcome of this case, from 2008 to 2010. The Commission cites the statutes in effect as of the beginning of the audit period in 2008.

(iii) consumed.

Utah Code Ann. §59-12-103(1). Utah law provides a sales tax exemption for:
a product purchased for resale in this state, in the regular course of business,
either in its original form or as an ingredient or component part of a
manufactured or compounded product;

Utah Code Ann. §50-12-104(25).

Utah Code Ann. §59-12-102(83)(a) defines “purchase price” and “sales price” as follows:

"Purchase price" and "sales price" mean the total amount of consideration:

- (i) valued in money; and
- (ii) for which tangible personal property, a product transferred electronically,
or services are:
 - (A) sold;
 - (B) leased; or
 - (C) rented.

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.

Utah law allows for use of dealer license plates by a license automobile dealer, as follows in pertinent part:

(1) Except as provided under this chapter, a dealer may operate or move a motor vehicle displaying a dealer plate issued by the division upon the highways without registering it under Title 41, Chapter 1a, Motor Vehicle Act, if the dealer owns or possesses the motor vehicle by consignment for resale.

. . .

- (5) Dealer plates may not be used:
- (a) (i) on a motor vehicle leased or rented for compensation; or
(ii) in lieu of registration, on a motor vehicle sold by the dealer; or
 - (b) on a loaded motor vehicle over 12,000 pounds gross laden weight unless a special loaded demonstration permit is obtained from the division.

Utah Code Ann. §41-3-501

The Utah Legislature has provided that the taxpayer generally bears the burden of proof in proceedings before the Tax Commission. Utah Code Ann. §59-1-1417 provides that “[i]n a proceeding before the commission, the burden of proof is on the petitioner”

DISCUSSION

The Taxpayer is a licensed auto dealer in the state of Utah. On or about June 6, 2008, the Taxpayer completed a Motor Vehicle Contract of Sale (the “Sale Contract”) for a 2007 Cadillac

Escalade (the “Cadillac”). The Sale Contract indicated that “PETITIONER” sold the Cadillac to “PERSON 1/PETITIONER.” The Taxpayer did not include sales tax on the Sale Contract. The Motor Vehicle Division of the Utah State Tax Commission (the “DMV”) issued title for the Cadillac to “PETITIONER,” and listed FINANCIAL INSTITUTION as lienholder.

The Division completed an audit of the transaction and issuance of a title. Because the Taxpayer paid no sales tax on the sales agreement, the Division computed sales tax and assessed that tax in a May 24, 2010 letter to the Taxpayer. The Taxpayer timely appealed the audit.

The Taxpayer argued that there was no sale of the Cadillac. Rather, The Taxpayer titled and registered it in the name of the business to obtain more favorable financing available to the owner and user of a vehicle. The Taxpayer explained that to finance a car as inventory required flooring financing that had higher cost and less favorable terms than owner financing. The Taxpayer presented evidence that it constantly had the Cadillac offered for sale from July 6, 2008 through May 24, 2010. The Taxpayer acknowledged putting over 20,000 miles on the Cadillac during that time. The Taxpayer defended that use, indicating that it was common for Utah auto dealers to use unregistered inventory vehicles under a dealer plate for a dealership business such as a personal vehicle for dealership personnel, running for parts, and vacations for dealership personnel. The Taxpayer argued that it should not be taxed for using a vehicle in the same way that other dealers use vehicles under a dealer plate.

The Division argued that a sales tax is a tax on a transaction, and that titling a vehicle to finance it created a taxable transaction. As an alternative argument, the Division argued that even had the Taxpayer not financed the Cadillac through the issuance of a title and registration, the dealership’s or personal use by employees or owners of the dealership was a “use” that triggered a sales tax under Utah law.

Utah Code Ann. §41-3-501(1) provides that “a dealer may operate or move a motor vehicle displaying a dealer plate.” Utah Code Ann. §41-3-501(5) goes on to place limitations on the use of a vehicle under dealer plates, but those apply only to vehicles rented or sold by the dealership or to “a loaded motor vehicle over 12,000 pounds gross laden weight.” This lack of limitation on use of dealer plates would tend to support the Taxpayer’s argument that there is no problem with a dealership using vehicles in inventory for its own or its employees use so long as the vehicles are in inventory and the dealer displays a dealer plate.

Utah laws relating to sales tax, however, are not as broad as the exceptions to laws pertaining to dealer plates. Utah law provides an exemption for “a product purchased for resale in this state, in the regular course [a licensed sales tax holder’s] business.” Utah Code Ann. §50-12-104(25). Utah law also imposes sales tax on “amounts paid or charged for tangible personal

property if within this state the tangible personal property is: (i) stored; (ii) used; or (iii) consumed.” Utah Code Ann. §59-12-103(1)(l)(emphasis added). These provisions may seem at odds for property that is held for resale and, at the same time, used for personal or business purposes. But they can be harmonized because there is a difference between uses that are for legitimate resale purposes and uses that are more related to general business or personal purposes. In the case of automobiles, a test drive with a potential buyer, moving a vehicle to a repair facility, or having a vehicle detailed would relate directly to resale and would not trigger sales tax. Use of a vehicle from inventory to run errands, pick up parts or supplies, or personal use such as travel to and from work or for vacation are not legitimately related to resale and trigger sales tax. This result is consistent with past Commission cases. *See, e.g.*, Utah State Tax Commission case no. 95-0115 (seller of books liable for sales tax on items taken from inventory and used by business).

Applying Utah law to the facts of this case, the Taxpayer used the Cadillac for personal and business purposes. Thus, the Taxpayer is liable for sales tax on the amount paid for the Cadillac, without regard to whether it was involved in a sales transaction. On the basis of the facts presented and Utah law, there is good cause to uphold the Division’s audit imposing sales tax on the Cadillac.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Commission sustains the Division’s 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

Appeal No. 10-1969

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

DATED this _____ day of _____, 2011.

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.