

10-2061
TAX TYPE: SALES TAX
TAX YEAR: 2010
DATE SIGNED: 8-23-2012
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER Petitioner,</p> <p>vs.</p> <p>AUDITING DIVISION, OF THE UTAH STATE TAX COMMISSION</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 10-2061</p> <p>Account No. ##### Tax Type: Sales Tax</p> <p>Judge: Marshall</p>
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Presiding:

D'Arcy Dixon Pignanelli, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, *Pro Se*
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General
RESPONDENT-1, Audit Manager
RESPONDENT-2, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 20, 2011, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

1. On DATE-1, 2010, the Respondent ("Division") issued an audit notice to the Petitioner ("Taxpayer") assessing \$\$\$\$\$ in sales tax, a \$\$\$\$\$ penalty for fraud with the intent to evade tax, and \$\$\$\$\$ in interest through DATE-2, 2010. (Exhibit 1).
2. Taxpayer acknowledges the tax liability, but is asking for relief from the \$\$\$\$\$ penalty.

3. Taxpayer and his wife assumed her parents' loan on a VEHICLE, with her parents gifting them the equity in the vehicle. The Taxpayer believed the value of the car was between \$\$\$\$\$ and \$\$\$\$\$ at that time. The loan amount assumed was \$\$\$\$\$. (Exhibit 4).
4. Taxpayer stated that he was unaware assuming the outstanding loan would be considered the purchase price of the vehicle. He stated that he filled out the bill of sale with his father-in-law before he went in to register the vehicle, and was told by a friend who works as a financial advisor for a bank that he had to write down a purchase price.
5. Taxpayer applied for a new title and registered the vehicle on DATE-3, 2010. On the bill of sale, he wrote down consideration in the amount of \$1. (Exhibits 2 and 3).
6. Taxpayer stated that he went to the DMV office on State Street located between 1300 and 1700 South to register the vehicle. He stated that he explained to the DMV clerk that his in-laws were giving them the vehicle as a gift, and that they would be paying off the remaining loan balance. He stated that the DMV clerk did not correct him and tell him to write down "gift" rather than \$1 in consideration.
7. The Taxpayer stated that no one specifically told him that writing down \$1 as opposed to the \$\$\$\$\$ would reduce his tax liability. However, he was aware that sales tax would be due on the transaction because he had purchased vehicles in the past and that the tax would be less on \$1 than on \$\$\$\$\$.
8. The Taxpayer stated that he works in the finance department of a large corporation and is concerned about the allegation of "fraud" because he feels as if it is an attack of his character.
9. The Taxpayer stated that he did not have intent to commit fraud, and that he had the money available to pay the sales tax. He provided copies of bank records showing tax refunds, a deposit of the funds from the sale of his car, and information showing the assumption of the loan. (Exhibits P1-P3).
10. The Division's representative argued that the Taxpayer knew that writing \$1 as the purchase price on the vehicle would result in a lower tax liability, and that the penalty should be sustained.
11. RESPONDENT-2 testified on behalf of the Division. He explained that they receive information from the DMV when an amount on a bill of sale is low in relation to the

value of a vehicle. In the instant case, the Division subpoenaed the loan documents from the lien holder to determine the purchase price on which to assess tax.

12. RESPONDENT-2, testified that DMV employees have general knowledge that if a vehicle is a “gift” there is no sales tax due, and that if there is a purchase price, there is tax due. He stated that generally if there is a gift made, the bill of sale or title will reflect “gift” not a purchase amount. RESPONDENT-2 also stated that the DMV has taken the position that they do not dispute bills of sale from taxpayers, do not cause a scene, but to forward information to the Division.

13. In response to the Taxpayer’s question as to if there was not a loan assumed would he have been “caught” RESPONDENT-2 explained that the DMV would have referred the case to the Division because of the amount written as the purchase price on the bill of sale. He also indicated that had the Taxpayer written “gift” on the bill of sale, the case would have been referred to the Division because there was a lien holder.

APPLICABLE LAW

Utah law imposes sales tax on certain transactions as set forth in Utah Code Ann. §59-12-103, 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 law provides for penalties for the underpayment of tax due to fraud with intent to evade tax under Utah Code Ann. §59-1-401(7)(a) as follows:

- (iv) If the underpayment is due to fraud with intent to evade the tax, the penalty is the greater of \$500 per period or 100% of the underpayment.

Utah Code Ann. §59-1-1217(1) provides that the burden of proof is on the Commission in a hearing to determine “whether the petitioner committed fraud with intent to evade a tax, fee, or charge.”

CONCLUSIONS OF LAW

Tax is imposed on the purchase for amounts paid on retail sales of tangible personal property in accordance with Utah Code Ann. §59-12-103. “Retail sale” is defined in Utah Code Ann. §59-12-102(95) as a sale, lease, or rental for a purpose other than resale, sublease, or subrent. Utah Code Ann. §59-12-102(97)¹ goes on to define a “sale” as any transfer of title,

¹ The Commission cites to the 2010 Sales and Use Tax Act.

exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration. The Utah Court of Appeals in *Coulter & Smith, Ltd. v. Russell*, 925 P.2d 1258, 1261 (Ct. App. Utah 1996), citing *Resource Management Co. v. Weston Ranch*, 706 P.2d 1028, 1036 (Utah 1985), held, “[i]t is well settled that consideration may be something other than money. Any ‘act or promise, bargained for and given in exchange for a promise’ constitutes consideration.” The Court goes on to note, citing Joseph M. Perillo & Helen H. Bender, *Corbin on Contracts* §5.8 at 34 (1995), “consideration may involve ‘some right, interest, profit, or benefit, accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.’” *Id.* Here, in exchange for the vehicle, Taxpayer assumed the loan balance. The loan balance was less than the value of the car, and the Taxpayer’s in-laws made a gift of the equity. The transaction is a “sale”, and is taxable as a retail sale of tangible personal property, with the purchase price being the value of the assumed loan. The Taxpayer’s testimony was that he knew writing down a purchase price of \$1 would result in a lower sales tax liability than if he wrote down the amount of the assumed loan. Utah Code Ann. §59-1-401(7) provides for a penalty the greater of \$500 or 100% of the underpayment of tax if the underpayment of tax is due to fraud with intent to evade the tax liability.

Under Utah Code Ann. §59-1-1217(1), the burden of proof in this matter is on the Division to show that the Taxpayer committed fraud with the intent to evade tax. While the Taxpayer may have written down a purchase price of \$1, the Division has not sustained its burden of proof to show that there was “fraud” in doing so. The Taxpayer testified that he was told by someone that he was required to write down some amount for the purchase price, and had explained the transaction to the DMV clerk. Under the circumstances, the Commission finds there is reasonable cause to waive the \$500 fraud penalty in accordance with Utah Code Ann. §59-1-401(13).

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission waives the \$\$\$\$ fraud penalty assessed on the audit. It is so ordered.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.