

10-2643
AUDIT – SALES TAX
TAX YEAR: 2010
SIGNED: 09-11-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

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. 10-2643</p> <p>Account No. ##### Tax Type: Audit – Sales Tax Tax Year: 2010</p> <p>Judge: Jensen</p>
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Presiding:
Clinton Jensen, Administrative Law Judge

Appearing:
For Petitioner: PETITIONER, 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 16, 2011 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (the “Taxpayer”) requested a waiver a 100 % fraud penalty in the amount of \$\$\$\$ assessed as the result of a sales tax audit on the purchase of a vehicle. On September 29, 2010, the Auditing Division of the Utah State Tax Commission (the “Division) assessed the Taxpayer \$\$\$\$ in additional tax, a 100% fraud penalty, and interest, which continues to accrue.

APPLICABLE LAW

Utah Code Ann. §59-12-103(1)(a) provides for a tax on retail sales of tangible personal property made within the state.

Utah Code Ann. §59-1-401(7)(a)(iv) provides for penalties on certain tax underpayments as follows:

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.

Interest 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.” Utah Code Ann. §59-1-402(5).

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. Utah Code Ann. §59-1-401(13).

DISCUSSION

On or about April 29, 2010, the Taxpayer purchased a 2006 Subaru Impreza (the “Subaru”). The Taxpayer indicated that the purchase price of the vehicle was \$\$\$\$\$. The bill of sale reflects a purchase price of \$\$\$\$\$. Upon titling and registering the vehicle, the Taxpayer paid sales tax on a \$\$\$\$\$ purchase price, rather than the actual purchase price of \$\$\$\$\$.

The Taxpayer does not dispute the tax liability or interest, but disputes the characterization of the transaction as “fraud,” and believes the amount of the penalty is too high. The taxpayer does not dispute that the bill of sale used to register the vehicle indicated a purchase price of \$\$\$\$\$. However, the Taxpayer explained that she was a STUDENT, and that the penalty would be a hardship on her. She indicated that this was her first car and that she was not aware of the consequences of stating a lower sales price to lower the amount of sales tax otherwise payable.

It is the Division’s position that the Taxpayer did not make a “mistake” in using a bill of sale with a \$\$\$\$\$ sales price, knowing that the purchase price was \$\$\$\$\$. The Division submitted a copy of the bill of sale, which shows a purchase price of \$\$\$\$\$. The Division asked that the Commission sustain the penalty, noting that Utah Code Ann. §59-1-401(7) provides for a penalty of the greater of \$\$\$\$\$ or 100% of the underpayment of tax.

Reviewing the evidence in this case, there is no dispute that the bill of sale used to register the vehicle indicated a sales price of \$\$\$\$\$. There is no dispute that the actual purchase price was \$\$\$\$\$. There is no dispute that the Taxpayer used the bill of sale to register the vehicle and pay sales tax on \$\$\$\$\$ when sales tax on \$\$\$\$\$ was due. The evidence, taken as a whole, supports the Division’s position that the Taxpayer’s actions were fraud with intent to evade the tax, which supports the assessment of sales tax, interest, and a penalty.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Commission sustains the Division's audit assessment of sales tax, penalty, 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

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.