

11-2437
REFUND REQUEST
TAX YEAR: 2011
SIGNED: 06-06-2012
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 11-2437</p> <p>Account No. #####</p> <p>Tax Type: Refund Request</p> <p>Tax Year: 2011</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, for the Division
RESPONDENT REP. 2, for the Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on December 15, 2011 for an Initial Hearing in accordance with the provisions of Utah Code Ann. §59-1-502.5. The Taxpayer is requesting a refund of registration fees in the amount of \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §41-1a-201 prohibits the operation of a motor vehicle in the State of Utah unless it has first been registered, as set forth below:

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.

Registration of a vehicle is for a period of 12 months, as set forth in Utah Code Ann. §41-1a-215(1), below in pertinent part:

(a) Except as provided under Subsection (2) and (3), every vehicle registration, every registration card, and every registration plate issued under this chapter for the first registration of the vehicle in this state, continues in effect for a period of 12 months beginning with the first day of the calendar month of registration and does not expire until the last day of the same month in the following year.

An application for a refund may be made to the Division under Utah Code Ann. §41-1a-1203, set forth below:

If the division through error collects any fee not required to be paid, the fee shall be refunded to the person paying the fee upon written application for a refund made within six months after date of the payment.

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

The Taxpayer explained that on DATE 1, he purchased a 1996 TRACTOR (the “TRACTOR”). Because the TRACTOR was not registered at the time of its purchase, the Taxpayer did not move it from the site of its purchase. He anticipated operating the TRACTOR on highways and thus registered it on DATE 2. As part of the registration process he paid a registration fee of \$\$\$\$ and related fees for a total of \$\$\$\$ to the Utah State Tax Commission.

The Taxpayer explained that before he ever operated the TRACTOR on Utah highways, he made a decision to place the TRACTOR in an auction. As part of the auction process, the Taxpayer authorized movement of the TRACTOR to the auction site on a lowboy trailer. The TRACTOR sold at auction on DATE 3. Before the TRACTOR left the auction site, the Taxpayer removed the license plates from it and surrendered the registration and license plates to the CITY 1, Utah Department of Motor Vehicles.

Utah Code Ann. §41-1a-201 requires registration of any vehicle prior to operating it within Utah. Utah Code Ann. §41-1a-215 provides that the registration of a vehicle is for a period of twelve months. The twelve-month registration fee is necessary when a vehicle is operated on Utah highways, even if for a matter of days or hours. However, a refund of fees is allowed if the Division collects a fee in error.

In this case, the Taxpayer registered the TRACTOR in anticipation of highway use that never happened. The parties agree that had the Taxpayer operated the TRACTOR on the highway, even for a short distance, those registration fees would have become nonrefundable. But because the Taxpayer never operated the TRACTOR on a highway Utah Code Ann. §41-1a-201

did not require a registration for it. On that basis, the Taxpayer characterizes his registration of the TRACTOR as an error under Utah Code Ann. §41-1a-1203, which provides for a refund if “the division through error collects any fee not required to be paid.” The Division’s position is that the Taxpayer did not make an error in registering the TRACTOR – he just changed his mind after he paid the fees for registration.

The Commission need not determine whether the Taxpayer changed his mind or whether he made an error in paying fees not required by law to be paid. Under Utah law, the “error” discussed in Utah Code Ann. §41-1a-1203 is Tax Commission error. Taxpayer error will not satisfy the error required for a refund. In *Shea v. State Tax Commission*, 120 P.2d 274 (Utah 1941), the Utah Supreme Court considered a Taxpayer’s request for a refund under a statute that provided for a refund if the Commission “through error collects” a fee not required to be paid. The Court ruled that the phrase “through error” meant error of the Commission or its employees in operating under applicable law. *Id.*, 120 P.2d at 275. *See also Ivory Homes v. State Tax Commission* 2011 UT 54 ¶20 (refund statute requirement that Commission erroneously receive tax could not be satisfied through taxpayer error).

Applying the principles of *Shea* and *Ivory Homes*, any error made in the case now before the Commission was by the Taxpayer. The Commission merely collected a fee that would have been necessary for legal operation of the TRACTOR on Utah roads. Because the “error” requirement of Utah Code Ann. §41-1a-1203 requires Tax Commission error, the Taxpayer has not demonstrated that there is any basis for a refund of his registration fees. There is good cause to sustain the Division’s denial of a refund.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Commission sustains the Division’s denial of a refund of registration fees and related fees. 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner