

12-353
TAX TYPE: SALES TAX
TAX DATE: 2011
DATE SIGNED: 10-1-2012
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-353</p> <p>Account No. #####</p> <p>Tax Type: Audit – Sales Tax</p> <p>Tax Year: 2011</p> <p>Judge: Jensen</p>
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearing:

For Petitioner: TAXPAYER, Taxpayer
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant
Attorney General
RESPONDENT, for the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on July 11, 2012 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (the “Taxpayer”) requested a waiver a \$500 fraud penalty it assessed as the result of a sales tax audit on the purchase of a vehicle. On December 23, 2011, the Auditing Division of the Utah State Tax Commission (the “Division) assessed the Taxpayer \$\$\$\$ in additional tax, a \$500 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 June 7, 2011, the Taxpayer purchased a TYPE OF VEHICLE for \$\$\$\$ (the VEHICLE). The bill of sale bill of sale that the Taxpayer used to register the VEHICLE indicated “GIFT/TRADE WORK” as the purchase price. On the basis of this bill of sale, the Taxpayer paid no sales tax when he registered the VEHICLE.

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 he used a document indicating that the VEHICLE was a gift or a trade for work when, in fact, he bought the VEHICLE for \$\$\$\$\$. However, he indicated that it was the seller, not him, that completed the bill of sale. He indicated that he did not think of the implication of using the bill of sale to register the VEHICLE. He said he paid some fees at the counter and said that he thought that he had paid sales tax. He did acknowledge that the person at the counter at the DMV told him that using the bill of sale would trigger an audit of the transaction.

Although not directly related to the purchase transaction, the Taxpayer added that some time after the Division’s audit, the VEHICLE was in an accident and considered a total loss.

It is the Division’s position that the Taxpayer did not make a mistake in using a bill of sale indicating a gift or trade, knowing that the purchase price was \$\$\$\$\$. 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 \$500 or 100% of the underpayment of tax.

Reviewing the evidence in this case, there is no dispute that the bill of sale that the Taxpayer used to register the VEHICLE falsely indicated that the VEHICLE was a gift or exchanged for work. The Taxpayer had full knowledge of this, yet used the bill of sale to register the VEHICLE. This use of a false document with full knowledge that the purchase price was other than indicated amounts to fraud. 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 _____, 2012.

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.