

12-2335, 12-2595 & 12-2779  
TAX TYPE: SALES TAX  
TAX YEAR: 01/09 – 03/09  
DATE SIGNED: 10-21-2014  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal Nos. 12-2335, 12-2595 &amp; 12-2779</p> <p>Account No. #####</p> <p>Tax Type: Sales Tax</p> <p>Tax Period: 01/09 – 03/09</p> <p>Judge: Phan</p>
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE-1 FOR PETITIONER, Representative  
REPRESENTATIVE-2 FOR PETITIONER, Representative  
REPRESENTATIVE-3 FOR PETITIONER  
REPRESENTATIVE-4 FOR PETITIONER

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney  
General  
RESPONDENT-1, Taxpayer Services Division  
RESPONDENT-2, Taxpayer Services Division  
RESPONDENT-3, Taxpayer Services Division  
RESPONDENT-4, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on May 15, 2014 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Taxpayer”) is appealing the decision of Respondent (“Division”) to dismiss the Taxpayer’s refund requests. There were three different requests which were assigned the three appeal numbers noted above which were combined for the purpose of the Initial Hearing. Appeal No. 12-2335 relates to a refund request submitted on February 28, 2012, for the monthly filing period of January 2009. This request was for the amount of \$\$\$\$\$. The Division had allowed some of the refund, but dismissed \$\$\$\$\$

from the request by Dismissal Notice dated August 15, 2012. Appeal No. 12-2595 relates to a refund request submitted March 30, 2012, for the February 2009 filing period. This request had been for the amount of \$\$\$\$\$. On October 3, 2012, the Division dismissed \$\$\$\$\$ from this request. Appeal No. 12-2779 relates to a refund request submitted by the Taxpayer on April 30, 2012 in the amount of \$\$\$\$\$, for the filing period of March 2009. The Division dismissed from that request an amount of \$\$\$\$\$ on October 12, 2012. At the hearing the parties reached an agreement with some additional transactions to which the Division agreed to issue a refund and others to which the Taxpayer had agreed to remove from contention. Based on these additional agreements made at the hearing, the amount of refund that remains in contention for purposes of all three periods combined is a total of \$\$\$\$\$.

APPLICABLE LAW

Sales and use tax is imposed under Utah Code Sec. 59-12-103(2009)<sup>1</sup> as follows in pertinent 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;

. . . .

Exemptions from sales and use tax are set out at Utah Code Sec. 59-12-104(2009). The exemption relevant in this matter is at Utah Code 59-12-104(14) and provides as follows:

The following sales and uses are exempt from taxes imposed by this chapter:

. . . .

- (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after July 1, 2006, for a purchase or lease by a manufacturing facility except for a cogeneration facility, for the following:

. . . .

- (ii) normal operating repair or replacement parts that: (A) have an economic life of three or more years; and (B) are used: (I) for a manufacturing facility . . . : (Aa) in the manufacturing process; and (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in this state; . . . :

The Tax Commission has adopted Utah Admin. Rule R865-19S-85(5)(2009) relating to the exemption for purchases by a manufacturing facility which provides:

The manufacturer shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

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<sup>1</sup> This decision cites to the 2007 version of Utah Code on the substantive legal provisions. There was no change in these provisions during the audit period, however, subsequently there have been some revisions or renumbering.

The Tax Commission has adopted Utah Admin. Rule R861-1A-46 regarding purchaser refund requests in pertinent part:

(1)(c) “Required information and documents” means, for each transaction included in a purchaser refund request: (i) a description of the item for which a refund is requested; (ii) the invoiced transaction date; (iii) the taxable purchase amount; (iv) the tax rate applied to the purchase amount; (v) the invoice number; (vi) the sales tax paid; (viii) the reason and basis in Utah law for exemption or excluding the item from sales tax; (ix) documentation that verifies that the item qualifies for a sales tax exemption or exclusion; (x) the amount of sales tax overpaid; (xi) proof of payment of sales tax, such as a canceled check, bank statement, credit card statement or receipt, letter from the seller, or other books and records that demonstrate payment was made; . . .

The burden of proof is on the Taxpayer in this matter. Utah Code Sec. 59-1-1417(2) provides:

Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:

. . .

(b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

DISCUSSION

At the hearing the Division had agreed to refund some items and the Taxpayer had agreed to remove some items from the refund request. In its Posthearing Brief, Respondent provided that the refund amount still at issue was now \$\$\$\$<sup>2</sup> and this was from 23 invoices remaining in dispute. The Taxpayer requests it be issued refunds on the sales tax it had paid on the remaining invoices, asserting that they are exempt under Utah Code Sec. 59-12-104(14) as normal operating repair or replacement parts that had an economic life of three or more years and were used at a manufacturing facility in the manufacturing process. It was not in dispute that the Taxpayer was a manufacturer and that the items purchased were used in the Taxpayer’s manufacturing facility. The Taxpayer operates a ##### plus square foot manufacturing operation in Utah that employs about ##### people. The primary issue raised by the Division was that the Taxpayer had failed to demonstrate the items purchased had an economic life of three or more years.

At the hearing the Petitioner provided two witnesses who were plant operations managers in the manufacturing process, REPRESENTATIVE-3 FOR PETITIONER and REPRESENTATIVE-4 FOR PETITIONER. These two witnesses went through every purchase

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<sup>2</sup> The Exhibit Attached to the Division’s Posthearing Brief provides a list of each item still at issue in this hearing by sellers’ name, invoice date and invoice number and is incorporated herein.

or repair at issue,<sup>3</sup> described what the part was for and in each case indicated that the part was expected to last more than three years and in some cases for many more than three years. The Division had no information that would dispute this testimony. The Taxpayer's representatives acknowledged that they did not capitalize the repairs or replacement parts. But they stated that they would not do so, due to the fact that the piece of machinery itself would be capitalized, so when they had to purchase a part to repair the machinery, that repair part would be expensed rather than capitalized. It was, however, the Taxpayer's position that there was nothing in the statute or rule that required the repair or replacement part to be capitalized to qualify for the exemption under 59-12-104(14).

The Taxpayer's representatives also acknowledged that for the items that had remained at issue, it had not included them on its economic life statement. The Taxpayer's representatives explained at the hearing and in the Post-Hearing Brief, the reason they did not include these items on the economic life statement was due to the time constraints the Division had set for these statements to be submitted. They point out that there was a voluminous amount of documentation that included the subject periods and subsequent periods that had to be reviewed and the items at issue did not get added to the economic life statements. They also pointed out that the Division had challenged items that were on these statements anyway, so they did not see these statements as a controlling factor. At the hearing the Taxpayer argued that again there was nothing in the statute or rule that required a taxpayer to produce these economic life statements and that the testimony from the plant managers provided at the hearing should be sufficient. They also indicated at the hearing that they were still willing to provide the statements, if it was required.

At the hearing and in its post hearing submission, the reason given by the Division for denying the refund for twenty out of twenty-three invoices at issue was that the Taxpayer had failed to meet its evidentiary burden to show items had a three year economic life. For two of the twenty-three invoices, the Division indicated that the Taxpayer had failed to provide proof of payment of the sales tax and for the final invoice item the Taxpayer had failed to show both the economic life and proof of payment.

The Division notes that in this proceeding the Taxpayer has the burden of proof citing, in general, the burden of proof is on the petitioner in proceedings before the Commission under Utah Code Sec. 59-1-1417(1). In addition the Division points out that as this deals with a sales

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<sup>3</sup> The repair or replacement parts at issue were: mold cavity halves (ejector half and hot half); inserts for cavities and slides, which are similar to cavities; core pins, including special core pins or blanks; slide halves; slide pullers; gates for molds; manifolds; nozzles; sprue bushings; heaters; fasteners and fittings; solenoid valves; pressure sensors; heaters; timing belt for robot and other; pneumatic line valves, clamps, and tubing; print heater; forklift, including parts; spark plugs and hearings; overhead insert equipment; clutch for a gearbox; programmable loci controller ("PLC") for equipment; and shaft seals.

tax exemption, Utah Code Sec 59-1-1417(2)(b) provides that the Commission construe a statute providing an exemption or credit strictly against the taxpayer. The Division did not provide any information that would refute the testimony regarding the economic life of the parts purchased. The Division did argue that under Utah Code Sec. 59-12-104(14) the Taxpayer must establish the machinery is used in a new or expanding operation, or as a normal operating replacement, that it is used in a manufacturing facility in Utah, has an economic life of three or more years and is used to manufacture an item sold as tangible personal property. The Division also cites to Utah Admin. Rule R865-19S-85(5)(2009) which provides the “manufacturer shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.” The Division does not cite to a statute or rule that specifically requires a signed economic life statement, which the Division has requested from the Taxpayer. The Division notes that this is a requirement from the Tax Commission’s website, which states that a taxpayer should, “Include a Signed Statement from a knowledgeable person in your company verifying that the items are being used in a facility in Utah and that the facility meets the requirements of 59-12-102, 59-12-104 and R865-19S-85.” It is the Division’s position that the general powers and duties of the Tax Commission under Utah Code Sec. 59-1-210(2) provide the Commission authority “to adopt rules and policies consistent with the Constitution and laws of the state . . .” Based on this the Division argues that it is appropriate to require taxpayers provide a statement from a knowledgeable person within the Taxpayer’s company that documents that the parts or machinery meets the exemption requirements and concludes it, “is within the Commission’s statutory authority to require and is a reasonable requirement for purchaser refund requests.”<sup>4</sup>

Although the economic life was the issue in twenty-one of the invoices at issue, there were three invoices for which the Division stated it did not have proof of payment of the taxes. Two of these invoices were from COMPANY-1 and the third was from COMPANY-2. It was the Division’s position that the Taxpayer had failed to provide sufficient proof of payment of the sales tax on these three invoices. For these three invoices, all the Taxpayer had provided was a screen shot of its data entry system from SAP accounting software. It was the Division’s position that it could not verify this as authentic. The Division notes that Admin. Rule R861-1A-46(xi), which requires for proof of payment of sales tax things “such as a canceled check, bank statement, credit card statement or receipt.

Regarding the question of proof of payment for these three invoices, the Taxpayer’s representatives explained that the Taxpayer uses SAP as its financial reporting software and it is

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<sup>4</sup> Respondent’s Posthearing Brief, pgs. 3-4.

audited each year by a public accounting firm as part of its compliance with the United States Securities and Exchange Commission. They also explained that for these invoices the payments were made via wire transfers so there were no canceled checks and the bank account records were not helpful as the vendor payments were processed and submitted in batch. The Taxpayer's representative notes that although Utah Admin. Rule R861-1A-46(xi) does list as acceptable proof of payment things like canceled checks it goes on to provide that proof of payment could be "or other books and records that demonstrate payment was made . . ." <sup>5</sup> It was the Taxpayer's contention that the SAP screen shot did demonstrate that the payment had been made and should be sufficient for the refunds on these three invoices.

After review of the information presented by the parties at the hearing and the legal arguments presented in the posthearing submissions, the remainder of the refund, now at \$\$\$\$ should be issued to the Taxpayer. The Taxpayer has demonstrated with witnesses who were knowledgeable persons in the Taxpayer's business that the invoices related to parts or repairs that met the three year economic life criteria. Although the Commission does not find it inappropriate for the Division to request signed economic life statements prior to issuing a refund, these statements are not required by statute or rule and, therefore, the information may be submitted in other reliable manners, including testimony from knowledgeable persons at a hearing. In this case the Taxpayer's witnesses went through each item at the hearing and explained what it was and how long they would expect it to last. The Division provided no information to the contrary regarding the economic life. The Division did argue that it was telling that these items were not capitalized, that they were instead expensed in the Taxpayer's accounting records. It would be typical for machinery or equipment that would last for a period of more than 3 years to be capitalized. However, the refund requests at issue were not purchases of equipment or machinery, they are purchases of normal operating repair or replacement parts. The Taxpayer explained that although they capitalized the machinery and equipment, parts for repair or replacement were expensed. Regarding the proof of payment, the screen shots from the Taxpayer's SAP system and testimony at the hearing are sufficiently reliable to show that the payment was made.

Jane Phan  
Administrative Law Judge

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<sup>5</sup> Petitioner's Posthearing Brief, pg 4.

DECISION AND ORDER

Based on the foregoing, the Commission orders the Division to refund to Petitioner the additional \$\$\$\$ in refunds that had remained in dispute from the hearing. 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 \_\_\_\_\_, 2014.

John L. Valentine  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

**Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.**