

14-689  
TAX TYPE: SALES & USE TAX  
TAX YEAR: 2011, 2012 and 2013  
DATE SIGNED: 3-30-2015  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,      Petitioner,  vs.  TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,      Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 14-689</p> <p>Account No. #####</p> <p>Tax Type: Sales &amp; Use Tax</p> <p>Tax Years: 2011, 2012 and 2013</p> <p>Judge: Phan</p>
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER, By Telephone  
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney  
General  
RESPONDENT-1, Assistant Director, 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 January 6, 2015, for an Initial Hearing in accordance with Utah Code §§59-1-1410 & 59-1-502.5. Petitioner (“Taxpayer”) is appealing the denial by Respondent (“Division”) to issue a refund. The Taxpayer had requested a refund of \$\$\$\$\$ in sales tax which he had paid on December 4, 2013, as well as other tax amounts he had paid in September 2011 and December 2012, with appropriate interest.

APPLICABLE LAW

Utah imposes sales tax on transactions at Utah Code Sec. 59-12-103 as follows:

- (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 also provides some specific exemption from sales tax at Utah Code Sec. 59-12-104, which in relevant part provides:

The following sales and uses are exempt from the taxes imposed by this chapter:  
. . . (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or garden, farm or other agricultural produce if the seasonal crops are, seedling plants are, or garden, farm or other agricultural produce is sold by: (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other agricultural produce; (b) an employee of the producer described in Subsection (20)(a); or (c) a member of the immediate family of the producer described in Subsection (20)(a).

Utah law puts the burden of proof on the Petitioner in this matter as well as expressly provides that tax exemption statutes are to be strictly construed. At Utah Code Sec. 59-1-1417 it states in relevant part:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner . . .
- (2) 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: (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

The Utah State Tax Commission has adopted a rule which makes it clear that dairy products are not seasonal crops or agricultural products. Utah Admin. Rule R865-19S-49 (5) provides:

Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold during the harvest season.

#### DISCUSSION

The Taxpayer had sold what he maintained were seasonal crops or agricultural products at several special events in Utah during 2011 through 2012. The product that he sold, however, was not farm vegetables in their natural state. It was a prepackaged PRODUCT-1 or PRODUCT-2 product containing dehydrated vegetables and other ingredients that were packaged under the name, "NAME" and the packaging stated "WORDS REMOVED." At issue were two different products that he had sold under this label. The first was "PRODUCT-1" and the ingredients as listed on the package for this state, "CONTAINS: INGREDIENTS." The directions listed on the package explained, "DIRECTIONS" The second product was, "PRODUCT-2" which had the

ingredient list of, "INGREDIENTS." The directions for this product were the same as for the first.

The Taxpayer explained that his parents owned a farm in COUNTY STATE. He also indicated that they had a green house at the farm and there were products like VEGETABLE which they grew year round in the green house. He states that they grew on the farm the VEGETABLES used in these products. He did not provide a list of the "Spices" included in the products, but indicated he could do so if that was an issue. For the "PRODUCT-2" product he stated that they also had a dairy and made their own sour cream and butter which they used in that product. He also insisted that the salt came from the farm or was produced on the farm as well, although as noted by the Division, salt is a mineral. It is not a crop that can be grown. He stated that the packaging of his products occurred at a plant in CITY.

It was the Taxpayer's position that the sales of his PRODUCT-1 and PRODUCT-2 products were exempt from sales tax under Utah Code 59-12-104(20) as agricultural produce sold during the harvest season. He argued that he met all the elements to the exemption at Sub. 104(20). First, it was his position that the PRODUCTS he sold would qualify as "other agricultural produce" under the statute. The statute states an exemption from tax for the sale during the harvest season of seasonal crops and "other agricultural produce." It was his contention then that the law must be intended to be broader than just crops because it also lists "other agricultural produce." He argues this would encompass his PRODUCTS.

The Taxpayer also argues that the sales did occur during the harvest season. He notes that the harvest season may be year round with the use of greenhouses. He cited to two websites regarding year round farmer's market and growing seasons. The Taxpayer also asserts "the outdoor harvest season" for most vegetables in STATE runs through November."<sup>1</sup> The sales at issue in this hearing occurred at events from September through December 2011, and November through December of 2012. He argued that these dates were within the "harvest season."

The third criteria under Utah Code 59-12-104(2) was that the produce be sold by the producer or a member of the producer's immediate family. It was his proffer that these vegetables and spices were grown on the farm which his parents owned. He did not present any evidence to support this proffer, but the Division did not offer anything in dispute of this contention either.

After the Division questioned whether the Taxpayer had standing to request the refund because the sales tax should have been paid by the purchasers of the product, the Taxpayer explained that he had, in fact, stopped charging sales tax to the purchasers after the first event he

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<sup>1</sup> Taxpayer's Statement attached to Petition for Redetermination, dated March 11, 2014, pg. 1.

had attended in September 18, 2011, because he had concluded he was selling agricultural produce. He states then for the subsequent events, he was required to pay the sales tax which he had not collected.

It was the Division's position that the sale of the PRODUCTS was not an "exclusive sale" of seasonal crops or other agricultural produce. The Division agreed that if the Taxpayer sold VEGETABLES grown on the farm in their natural state, these sales would qualify. However, it was the Division's position that what was being sold was not a crop or agricultural produce because dehydrating and blending harvested crops and other items to produce the PRODUCT-1 or PRODUCT-2 changed the product being sold. The Division also contended that mixing nonagricultural produce like salt and milk products with the farm produce meant that the sale was no longer "exclusively" a sale of crop or farm produce. Additionally, the Division points out that the PRODUCTS also included "spices" and they questioned what these spices were and whether or not they were grown on the Taxpayer's parents' farm. Another point that the Division argues was that these products were not sold during the harvest season.

Upon review of the parties positions and information provided, first the Commission must consider that because this matter is dealing with an exemption from tax, it must construe the statute providing an exemption strictly against the Taxpayer under Utah Code Sec. 59-1-1417(4). This means it must be clear from the language of the statute that the Taxpayer would qualify for exemption. For purposes of this exemption, there is no express statutory definition of "harvest season," "seasonal crops," or "other agricultural produce." Utah Admin. Rule R865-19S-49 (5) provides the only guidance in the rule and it does expressly exclude from this exemption poultry, eggs and dairy products. As concluded by the Utah Supreme Court, "When interpreting statutory language, our primary object is to ascertain the intent of the legislature." To discern legislative intent, we first look to the plain language of the statute. "We presume that the legislature used each word advisedly and read each term according to its ordinary and accepted meaning." *Ivory Homes v. Tax Commission*, 2011 UT 54, 21 (Citations Omitted). In that case the Court goes on to note that "our interpretation of a statute requires that each part or section be 'construed in connection with every other part or section so as to produce a *harmonious whole*.'" *Id.* at 21 (Emphasis in Original, Citations Omitted).

Even without knowing all of the "SPICES" included in the PRODUCT-1 and PRODUCT-2, it is clear that both include non farm produce items. Both products include salt, which is a mineral and not something that can be grown on a farm. The potato topping includes dairy products which are expressly excluded under Utah Admin. Rule R865-19S-49 (5).

Given Utah Code Sec. 59-1-1417(2) and the Utah Supreme Court’s guidance on statutory interpretation, the Commission may not read the language of the sales tax exemption at Utah Code Sec. 59-12-104(20) so broadly as to include a manufactured product made from dehydrating VEGETABLES and other items that are not crops or farm products and mixing and packaging them into PRODUCT-1 or PRODUCT-2. The Taxpayer was selling a PRODUCT-1 and PRODUCT-2, not “agricultural produce”. The Division correctly denied the Taxpayer’s refund request as the PRODUCT-1 and PRODUCT-2 products sold by the Taxpayer are not exempt as “agricultural produce” under Utah Code Sec. 59-12-104(20).

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer’s appeal in this matter. 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, or emailed, 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

or emailed to:  
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

John L. Valentine  
Commission Chair

D’Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner