15-585
TAX TYPE: SALES & USE TAX
TAX YEAR: 09/01/11 – 06/30/14
DATE SIGNED: 5-6-2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 15-585 Account No. #####-STC Tax Type: Sales and Use Tax Audit Period: 09/01/11 – 06/30/14 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner:	REPRESENTATIVE-1 FOR TAXPAYER, Controller (by telephone) REPRESENTATIVE-2 FOR TAXPAYER, Manager (by telephone)
For Respondent:	REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General RESPONDENT-1, from Auditing Division RESPONDENT-2, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on March 2, 2016.

TAXPAYER ("Petitioner" or "taxpayer") has appealed a sales and use tax assessment that Auditing Division (the "Division") imposed for the period September 1, 2011 through June 30, 2014 ("audit period"). On March 11, 2015, the Division issued a Statutory Notice - Sales and Use Tax ("Statutory Notice"), in which it imposed sales and use tax and interest (calculated through April 10, 2015)[1] for the audit period, as follows:

Tax	Penalties	Interest	Total
$$$$$	$$$$$	$$$$$	$$$$$

The Division's assessment is based on an Amended Utah Tax Audit Report that consists of four schedules.[2] The taxpayer is only contesting the tax imposed in one column on one of these schedules, specifically the tax associated with taxable sales assessed in column (29) of Schedule 1-A. The taxpayer does not contest any other portion of the assessment. The Division has identified the sales assessed in column (29) as "NAME-1" sales. During the audit period, the Division determined that the taxpayer had taxable NAME-1 sales in the amount of $$$$$. Because the tax rate applicable to these sales is 6.6%, the sales and use tax that the Division imposed on the NAME-1 sales and that the taxpayer is contesting is $$$$$, which represents slightly more than half of the total assessment.

Facts and Arguments

1. The taxpayer's business is a fitness center and racquet club located in CITY-1, Utah (the "Fitness Center"). The Fitness Center has aerobics rooms, weight rooms, a swimming pool, basketball courts, racquetball courts, tennis courts, and locker rooms.

2. Many of the persons who use the Fitness Center are members who pay a periodic membership fee, which entitles them to use the facilities and take aerobics and other classes. On these membership fees (which may be as much as $$$$$ every two weeks), the taxpayer charges sales and use tax. In addition, the Fitness Center occasionally sells one-day guest passes, which entitle the guest to use the facilities and take classes. The taxpayer also charges sales and use tax on the amounts paid by these one-day guests. The amounts that the Fitness Center is paid for persons to participate in the NAME-1 program, however, is handled

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1 Interest continues to accrue until amounts due are paid.

2 The Amended Utah Tax Audit Report ("amended audit report") was issued along with the Division's Statutory Notice. As a result, any amendments reflected in the amended audit report were made prior to the mailing of the Statutory Notice and the filing of the appeal. Utah Code Ann. §59-1-1417(1) provides that the burden of proof in this matter is upon the taxpayer, with limited exceptions. One of those exceptions, as found in Subsection 59-1-1417(1)(c), concerns an increase in a deficiency that the Division asserts *after* it issues its notice of deficiency and an appeal is filed. Because the original audit report was amended *prior* to the mailing of the Division's Statutory Notice and the filing of the appeal, this exception does not apply. Because none of the exceptions apply, the taxpayer bears the burden of proof in this matter.

differently than the "normal" membership payments and one-day guest payments just described. As a result, the taxpayer does not believe that amounts paid or charged for the NAME-1 program should be subject to sales and use tax.

3. The NAME-1 program allows senior citizens to use the Fitness Club's facilities and to take certain classes that the Fitness Center has specifically geared to the physical capabilities of older persons. The Fitness Center provides the NAME-1 program pursuant to contracts it has entered into with two companies, COMPANY-1 ("COMPANY-1") and COMPANY-2 ("COMPANY-2").

4. COMPANY-1 and COMPANY-2 have also entered into agreements with health plans to provide fitness services, benefits, and programs to eligible health plan members within a network of fitness centers, one of which is the Fitness Center. The contract between the taxpayer and COMPANY-1 (the "COMPANY-1 contract") requires the Fitness Center to provide the *NAME-1* program to eligible health plan members, while the contract between the taxpayer and COMPANY-2 (the "COMPANY-2 contract") requires the Fitness Center to provide the *NAME-2* program to eligible health plan members. For purposes of the taxpayer's accounting records and the Division's assessment, the NAME-1 program and the NAME-2 program are collectively referred to as the "NAME-1 program."

5. The Division proffered a copy of the COMPANY-1 contract, but neither party proffered a copy of the COMPANY-2 contract. The Division has relied solely on the COMPANY-1 contract to support the sales and use tax it has assessed on payments made under the NAME-1 program. As a result, it will be assumed that the provisions in the COMPANY-2 contract are similar enough to those in the COMPANY-1 contract so that the COMPANY-1 contract can be used to determine the taxability of all NAME-1 payments. The taxpayer has not shown otherwise.

6. Paragraphs (1)(i) of the COMPANY-1 contract provides that the NAME-1 "program" will include NAME-1 exercise classes and basic fitness membership services for HEALTH PLAN MEMBER.

Provision (1)(h) defines "Member" to mean "a Health Plan Member eligible for the Program. . . ." Persons who are eligible to use the Fitness Center's facilities pursuant to the Healthcare and COMPANY-2 contracts will be referred to as "health plan members."

7. Paragraph (2)(b) of the COMPANY-1 contract provides that health plan members are allowed to take NAME-1 classes and have full use of the Fitness Center's facilities and other programs at no charge to the health plan members, as follows:

> Member Program Rights. Following completion of the Program Enrollment Process, any Member shall be entitled, at no charge, including those fees normally associated with initiation or monthly dues, to establish a basic fitness membership with unrestricted hours at Fitness Center, provided that such individual remains a Member and this Agreement remains in effect. As part of the Program and accompanying membership to Fitness Center, each Member will be entitled to full access to Fitness Center, and shall be admitted to free health clinics and seminars, fitness challenges and testing, social events and parties, and organized recreational sports that may be offered from time to time by Fitness Center. The Program excludes all those programs and services offered by Fitness Center which carry additional charges beyond basic fitness membership services, such as racquetball, tennis, massage therapy, lessons related to recreational sports, tournaments, and similar fee-based activities. If Fitness Center already offers its members discounts on the above programs, services, and facilities which carry additional charges, Program Members shall also be entitled to such discounts. Fitness Center shall not impose any charges on Members for Program services covered under this Agreement. If a Member requests services after being informed by Health Plan of Fitness Center that the services are not covered under the Program, the Member shall be solely liable for payment.

8. Paragraph (2)(f) of the COMPANY-1 contract provides that the Fitness Center will provide NAME-1 classes, which include a group exercise class, a muscular strength and range of movement class, and a cardio circuit class for more advanced health plan members. The taxpayer proffered that these classes include aerobics classes, "fitness" classes, and pool aerobics classes. These classes are taught by instructors provided by the Fitness Center. Paragraph (2)(g) also provides that the Fitness Center will provide NAME-1 class equipment for the NAME-1 classes, as appropriate, which includes chairs, elastic tubing with handles, hand-held weights, and music. The taxpayer proffered that in order to comply with its contracts with COMPANY-1 and COMPANY-2, it provides about 20 NAME-1 classes per week.

9. The taxpayer proffered that all health plan members not only have access to the NAME-1 classes, but also have access to and use of all of the Fitness Center's facilities. In addition, the taxpayer proffered that any member of the Fitness Center, including its "regular" non-health plan members, can attend the NAME-1 classes that the Fitness Center provides under its contracts with COMPANY-1 and COMPANY-2. The taxpayer, however, pointed out that most health plan members do not use the Fitness Center's other facilities and that most of the Fitness Center's other members do not take the NAME-1 classes.

10. Paragraph (3)(a) of the COMPANY-1 contract provides the "membership compensation" to which the Fitness Center will be entitled for providing the NAME-1 program to health plan members. This paragraph provides that Healthcare will pay the Fitness Center according to the schedule set forth in Exhibit B. This paragraph also provides that "[c]ompensation paid by [COMPANY-1] is inclusive of any and all taxes which Fitness Center may be required to pay to any governmental authority."

11. The taxpayer stated that it is paid $$$$$ for each day that a health plan member signs in at Fitness Center, regardless of whether that member is taking the NAME-1 program or using the Fitness Center's other facilities. Exhibit B of the COMPANY-1 contract, which was signed in 2006, provides that COMPANY-1 shall compensate Fitness Center $$$$$ per "program visit" by a health plan member, up to a maximum of $$$$$ per health plan member per month. In 2009, the taxpayer and COMPANY-1 signed an "Amendment" to the COMPANY-1 contract, in which COMPANY-1 agreed to pay the Fitness Center higher amounts for periods beginning January 1, 2011 and January 1, 2012 (which are within the audit period).[3] The taxpayer estimates that the Fitness Center has between 1,500 and 2,000 program visits by health plan members each month.

3 The audit period covers portions or all of 2011, 2012, 2013, and 2014. The Amendment provides that for the 2011 calendar year, the membership compensation would increase to $$$$$ per "program visit" by a health plan member, up to a maximum of $$$$$ per health plan member per month. It also provided that beginning on January 1, 2012, the membership compensation would increase to $$$$$ per "program visit" by a health plan member, up to a maximum of $$$$$ per health plan member per month.

12. The taxpayer keeps a record of each program visit that a health plan member makes to the Fitness Center. Once a month, the taxpayer sends an accounting of the monthly program visits to COMPANY-1, after which COMPANY-1 sends payment to the taxpayer. The taxpayer indicates that the health plan members do not reimburse COMPANY-1 for the amounts that COMPANY-1 pays to the taxpayer for the health plan members' program visits.

13. The Division contends that the amounts that COMPANY-1 and COMPANY-2 pay in order for health plan members to use the Fitness Club's facilities and to take classes, including NAME-1 classes, are subject to sales and use tax under Utah Code Ann. §59-12-103(1)(f). The Division points out that under this provision, "amounts paid or charged as admission or user fees" for a variety of specifically listed events and activities, including "sports activities," or "any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity" are subject to sales and use tax. Although use of a fitness center is not one of the events or activities specifically listed, the Division contends that amounts paid or charged to use the Fitness Center's facilities are taxable because such use would be considered a sports activity or any other recreation or athletic activity.

14. Because the compensation that COMPANY-1 and COMPANY-2 pay the Fitness Center for health plan members entitles those members to full use of the Fitness Center's facilities, the Division contends that the payments are taxable, even though these members are also entitled to take classes that have instructors. The Division contends that for sales and use tax purposes, these payments are no different from the membership payments that the Fitness Center's non-health plan members pay to use the facilities and take classes that have instructors.

15. The Division admitted that amounts paid or charged for a class that has an instructor would be considered the nontaxable sale of services and, thus, not be subject to sales tax. As an example, it explained

that the Fitness Center charges sales and use tax on a separate amount paid by a member to use a tennis court, but does not charge sales and use tax on a separate amount paid for a tennis lesson from an instructor on the same court. The Division stated that had the amounts that COMPANY-1 and COMPANY-2 paid for the health plan members' program visits only entitled the health plan members to take classes that have instructors, the amounts would not be nontaxable sales of services. However, because Paragraph (2)(b) specifically provides that health plan members have the same use of the facilities as the Fitness Center's other members, the Division contends that the amounts paid under the contract are taxable.

16. The Division states that it makes no difference that it is COMPANY-1 and/or COMPANY-2, and not the health plan members themselves, who are purchasing the admission or user fees at issue. The Division contends that the purchases are subject to sales and use tax, unless an exemption applies.

17. The taxpayer does not believe that the amounts paid by COMPANY-1 and/or COMPANY-2 for the health plan members' program visits should be taxable. First, the taxpayer asks the Commission to consider that the payment the Fitness Center receives for a health plan member's program visit is set by contract and that the Fitness Center is not authorized to increase the payment. In addition, while the taxpayer admits that these payments entitle the health plan members to fully access the Fitness Center's facilities, it asks the Commission to consider that it would not receive any revenue from COMPANY-1 and COMPANY-2 if it did not offer the NAME-1 classes that have instructors. Because the payments it receives for health plan members' program visits are different from its "regular" membership dues, it asks the Commission to find that the NAME-1 payments at issue are not subject to taxation.

18. Second, the taxpayer asks the Commission to consider that when it entered into the COMPANY-1 contract in 2006, its accountant called the Tax Commission and was told that the payments it received for the NAME-1 program were not subject to sales and use tax. The taxpayer admitted that neither it nor its accountant have any notes now to show with whom the accountant spoke at the Tax Commission or

what was said. However, the taxpayer contends that its accountant told it that the NAME-1 payments were nontaxable, which is why it has not remitted sales and use tax on these payments.

19. Third, the taxpayer contends that COMPANY-1 and COMPANY-2, the companies that make the payments at issue, are exempt from sales and use taxation. The taxpayer thinks it may have received exemption certificates from COMPANY-1 and COMPANY-2 in which these entities informed the taxpayer that they were not subject to taxation. However, the taxpayer admits that it does not have any exemption certificates from these entities to proffer as evidence at the Initial Hearing.

20. The Division contends that NAME-1 payments are subject to taxation because they entitle the health plan members to fully use and access Fitness Center's facilities. Furthermore, the Division indicates that there is no information to know what questions the taxpayer's accountant asked the Tax Commission in 2006 or know how the Tax Commission replied. The Division does admit that had the Fitness Center received exemption certificates from COMPANY-1 and COMPANY-2 indicating that they were exempt entities or that the sales between them and the Fitness Center were exempt from taxation, Fitness Center would not be liable for the tax imposed on the NAME-1 sales. The Division stated, however, that it has seen no exemption certificates that these entities may have provided to the Fitness Center. In addition, the Division stated that it is unaware of any exemption that applies to entities such as COMPANY-1 and COMPANY-2. For these reasons, the Division asks the Commission to find that the NAME-1 sales are taxable.

21. In case the Commission finds that the NAME-1 sales are taxable, the taxpayer contends that the sales prices on which the Division has imposed tax are too high. The taxpayer contends that the Division has imposed sales and use tax on each $$$$$ payment that COMPANY-1 and/or COMPANY-2 has paid for a program visit. The taxpayer, however, contends that each $$$$$ payment included any sales and use tax due on the transaction. For example, at a 6.6% tax rate, the taxpayer contends that the $$$$$ payment should represent an admission or user fee of $$$$$ plus $$$$$ of sales and use tax. The taxpayer asks the

Commission to reduce the total amount of NAME-1 sales on which the Division imposed sales and use tax by considering all payments from COMPANY-1 and COMPANY-2 to be inclusive of sales and use tax. The taxpayer contends that "backing out" the sales and use tax from the NAME-1 sales would slightly reduce the taxes that the Division has assessed on these sales.

22. The Division stated that it would be appropriate to back out the sales and use tax from the NAME-1 sales, as requested by the taxpayer. The Division stated that many admission or user fees are treated in this manner. As a result, the Division has no objection to the Commission finding that the amounts of NAME-1 sales on which it imposed tax should be reduced to back out the appropriate amounts of sales and use taxes.[4]

APPLICABLE LAW

1. Utah Code Ann. §59-12-103(1) imposes a sales and use tax on certain admissions and user fees, 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:
>
> . . . .
>
> (f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;
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> . . . .

2. UCA §59-1-1417 provides that the burden of proof is upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

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4 The taxpayer's request to back out sales and use tax and the Division's agreement to do so is also supported by Paragraph (3)(a) of the COMPANY-1 contract, which provides, in part, "[c]ompensation paid by [COMPANY-1] is inclusive of any and all taxes which Fitness Center may be required to pay to any governmental authority."

> (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:
>
> (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
>
> (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
>
> (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
>
> (i) required to be reported; and
>
> (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.
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> . . . .

DISCUSSION

The Commission will address the taxpayer's various arguments as to why the NAME-1 sales should be found to be nontaxable. If the Commission agrees with taxpayer's position concerning the taxability of the NAME-1 sales, all taxes associated with these sales, as reflected in column (29) of Schedule 1-A, will be abated. On the other hand, if the Commission agrees with the Division's position that these particular sales are taxable, then the sales amounts on which taxes were imposed will be reduced to back out sales and use tax. In either case, the remainder of the Division's assessment will be sustained.

Taxability of NAME-1 Payments. The payments by COMPANY-1 and/or COMPANY-2 entitle health plan members to full access and use of Fitness Center's recreation, sports, and athletic facilities. As a result, the NAME-1 payments are admission or user fees subject to taxation under Subsection 59-12-103(1)(f), even though the payments also entitle the health plan members to attend NAME-1 and other aerobics classes that have an instructor. These payments provide the same access and use of Fitness Center's facilities and classes as the bi-weekly, monthly, or daily payments made by the Fitness Center's non-health plan members and daily guests. There is no convincing reason as to why the taxability of payments to provide access to and

use of the Fitness Center by non-health plan members and daily guests should be different from the taxability of the NAME-1 payments to provide the same access to and use by health plan members.

The taxpayer suggests that the payments should be taxed differently because the NAME-1 health plan members do not make the payments themselves. However, the tax is imposed on any non-exempt person or entity who purchases an admission or user fee for an event or activity described in Subsection 59-12-103(1)(f). It does not matter whether the person or entity purchasing the admission or user fee is the person who is allowed to attend the event or engage in the activity. For example, assume a corporation paid the monthly gym or fitness center membership fee of any employee. That fee would be a taxable admission or user fee even though the employee did not have to pay the fee.

The taxpayer also contends that it would not be receiving the NAME-1 payments had it not agreed to provide NAME-1 classes that have instructors. In addition, the taxpayer asserts that the NAME-1 health plan members do not use the Fitness Center's other facilities as much as its regular members. The factors are not determinative. Even though the taxpayer added NAME-1 programs to comply with its COMPANY-1 and COMPANY-2 contracts, these contracts clearly provide that the health plan members are receiving memberships that are equivalent to the Fitness Center's regular non-health plan members. In addition, the purchases at issue entitle health plan members full access to and use of the facilities, regardless of whether they take advantage of them. As a result, the purchases are admission or user fees for the entire facilities, not just for classes that have instructors. Accordingly, these facts do not change the taxable status of the NAME-1 payments.

Finally, the taxpayer claims that the NAME-1 payments should not be taxable because COMPANY-1 and/or COMPANY-2, not the Fitness Center, establishes the payment amount for NAME-1 program visits. This argument is unpersuasive. The taxpayer was not required to sign either of the contracts with COMPANY-1 and COMPANY-2. However, when it did, the taxpayer, as well as COMPANY-1 and COMPANY-2, agreed

to the membership compensation or payments contained within those contracts. As a result, this factor is not determinative and does not change the taxable status of the NAME-1 payments. The NAME-1 payments are subject to sales and use tax.

Accountant's Conversation with Tax Commission. The taxpayer contends that its accountant told it that the NAME-1 payments were not subject to sales and use tax after he or she had a conversation with the Tax Commission about the NAME-1 program in 2006. This assertion, however, is insufficient for the Commission to abate the taxes the Division has imposed on these taxable sales. There is no information to know with whom the accountant spoke at the Tax Commission or what information the accountant disclosed to the Tax Commission employee. The accountant was not present to proffer testimony.[5] Nevertheless, even if evidence were available to show that a Tax Commission employee told the accountant that payments that entitle health plan members full access to the Fitness Center facilities were nontaxable, such action by a Tax Commission employee would not preclude the Commission from implementing the law that applies to this case. The Utah Supreme Court has found that the Commission cannot be held responsible for representations of its employees except in rare circumstances.[6] In this case, the taxpayer provided no written communication,

5 As a result, the taxpayer's assertion of what the accountant was told by a Tax Commission employee would be hearsay. Utah Code Ann. §63G-4-206(1)(c) provides that in proceedings such as those held by the Tax Commission, evidence may not be excluded solely because it is hearsay. However, UCA §63G-4-208(3) provides that "[a] finding of fact that was contested may not be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence." Utah Admin. Rule R861-1A-28(2)(b) provides that hearsay evidence may be admitted at Tax Commission proceedings, but that no decision of the Commission will be based solely on hearsay evidence.

6 Utah courts have found that equitable estoppel should only be applied against a state agency in unusual situations. In *Holland v. Career Serv. Review Bd.*, 856 P.2d 678 (Utah App. 1993), the Utah Court of Appeals found that "it is well settled that equitable estoppel is only assertible against the State or its institutions in unusual situations in which it is plainly apparent that failing to apply the rule would result in manifest injustice." In *Holland*, the Court explained that in such cases, "the critical inquiry is whether it appears that the facts may be found with such certainty, and the injustice to be suffered is of sufficient gravity, to invoke the exception." Furthermore, in *Anderson v. Public Service Comm'n*, 839 P.2d 822 (Utah 1992), the Utah Supreme Court has stated that "[t]he few cases in which Utah courts have permitted estoppel against the government have involved very specific written representations by authorized government entities." The Commission has addressed the principle of equitable estoppel in a number of prior cases. *See, e.g., USTC*

and the facts are too uncertain to warrant invoking equitable estoppel. Accordingly, the accountant's purported conversation with a Tax Commission employee does not warrant an abatement of the taxes that the Division has imposed on the NAME-1 sales.

Exemptions from Sales Tax. The taxpayer thinks that COMPANY-1 and COMPANY-2 may be exempt entities that are not required to pay sales and use taxes on sales that would otherwise be taxable. The Commission is aware that certain sales made to the state, its institutions, and its political subdivisions are exempt from taxation in accordance with UCA §59-12-104(2). However, the taxpayer has provided no evidence to show that COMPANY-1 and/or COMPANY-2 are considered to be the state or institutions or political subdivisions of the state. The Commission is also aware that certain sales made to or by a religious or charitable institution are exempt from taxation in accordance with Subsection 59-12-104(8). The taxpayer, however, has not shown that either it, COMPANY-1, or COMPANY-2 are a religious or charitable institution. Accordingly, these exemptions also do not apply.

Finally, Utah Admin. Rule R865-19S-23(A) provides that "[t]axpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales." The taxpayer has provided no exemption certificates or other records to show that COMPANY-1 and/or COMPANY-2 was not required to pay sales and use tax on its NAME-1 purchases.

Summary. In conclusion, the taxpayer has not shown that the NAME-1 sales at issue are not subject to taxation, nor has the taxpayer shown that the Commission should abate these taxable sales. Accordingly, the Commission should sustain the Division's assessment, except that the NAME-1 sales amounts should be reduced to back out sales and use tax.

Appeal No. 11-297 (Revised Initial Hearing Order, Aug. 25, 2011), in which the Commission invoked equitable estoppel; and *USTC Appeal No. 11-2658* (Initial Hearing Order, Apr. 14, 2013), in which the Commission did not invoke equitable estoppel.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessment with one exception. For the NAME-1 sales on which the Division imposed tax, as shown in column (29) of Schedule 1-A, the Commission finds that the sales amounts should be reduced to back out sales and use tax. 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 _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.