

15-680  
TAX TYPE: SALES & USE TAX  
TAX YEAR: 2011, 2012, 2013  
DATE SIGNED: 5-6-2016  
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL  
EXCUSED: J. VALENTINE  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<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 style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 15-680</p> <p>Account No. #####</p> <p>Tax Type: Audit - Sales &amp; Use Tax</p> <p>Audit Period: 01/01/11 – 12/31/13</p> <p>Judge: Phan</p>
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**Presiding:**  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Representative  
REPRESENTATIVE-2 FOR TAXPAYER, Controller of  
TAXPAYER.  
REPRESENTATIVE-3 FOR TAXPAYER, Controller of  
COMPANY-1, Owner of TAXPAYER.

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney  
General  
RESPONDENT-1, Deputy Director, Auditing Division  
RESPONDENT-2, Tax Audit Manager  
RESPONDENT-3, Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 25, 2016 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Respondent (“Division”) had issued a Statutory Notice on March 25, 2015. Petitioner (“Taxpayer”) timely filed an appeal of deficiency as provided under Utah Code §59-1-501. The audit notice stated \$\$\$\$ in additional tax was due for the audit period of January 1, 2011 to December 31, 2013. As of the date of the notice of March 25, 2015, interest accrued to \$\$\$\$ for a total due amount of \$\$\$\$\$. Interest continues to accrue on any unpaid balance. The Taxpayer did not contest the deficiencies listed in Schedules 1

through 4 of the audit notice, but is contesting only Schedule 5–Unreported Purchases (Related Company Transactions). Schedule 5 indicated tax due in the amount of \$\$\$\$\$, which is the disputed amount in this hearing, plus the interest accrued thereon.

APPLICABLE LAW

A tax is imposed at Utah Code Sec. 59-12-103(1) (2013)<sup>1</sup> as follows:

A tax is imposed on the purchase as provided in this part for amounts paid or charged for the following transactions:

...

(g) amounts paid or charged for service for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for: (i) the tangible personal property; and (ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations of that tangible personal property;

...

The burden of proof and statutory construction as applied in these proceedings are at Utah Code Sec. 59-1-1417, which provides as follows:

(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.

DISCUSSION

The issue before the Tax Commission at the Initial Hearing is the audit deficiency listed in Schedule 5 of the Statutory Notice of Audit Deficiency, dated March 25, 2015. Schedule 5 is listed as Unreported Purchases (Related Company Transactions). In the Schedule 5, the Division had assessed sales tax on what the Division determined were taxable repairs of tangible personal property performed on Taxpayer’s machinery and equipment by employees of CORPORATION-1. CORPORATION-1 is a company related to the Taxpayer. Schedule 5 lists the reimbursements from the Taxpayer to CORPORATION-1. The Taxpayer argues that these amounts charged were not for services to repair or renovate tangible personal property, but were instead only a reimbursement for employee labor. The Taxpayer had paid directly for the parts that were used in maintaining the Taxpayer’s machinery and equipment or reimbursed at cost for the parts. However, the Taxpayer did not have employees of its own who could install the parts or make the

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<sup>1</sup> The Commission applies the substantive law that was effective during the audit period.

repairs. CORPORATION-1 employees performed the labor. The Taxpayer states that the amounts paid by Taxpayer to CORPORATION-1 listed in Schedule 5 were only to reimburse CORPORATION-1 for the employee time plus an overhead to cover payroll costs.

The Taxpayer and CORPORATION-1 were the same entity until they were split into two separate entities in 2010. The Taxpayer is a retailer, selling building materials. The Taxpayer uses forklifts, trucks and other machinery in its operations. It is the employees of CORPORATION-1 that perform repairs on the Taxpayer's machinery and equipment. There is no invoice created in these transactions, but it is tracked through employees' time cards and internal accounting. The Taxpayer argues the essence of the transaction is sharing employees or payroll reimbursement for shared employees.

At the hearing the Taxpayer offered in support of its position *Utah Tax Commission, Private Letter Ruling 96-176DJ*, issued December 30, 1996, in which the Commission stated that charges for payroll reimbursements and service fees by a professional employer organization to provide employment services to affiliated businesses was not subject to sales tax. This Private Letter Ruling is distinguishable from the facts in the subject appeal because there was no indication in the Private Letter Ruling that the employees were providing services for repairs of tangible personal property. At issue in this matter is the provision set out at Utah Code Sec. 59-2-103(1)(g) which imposes a sales tax on "amounts paid or charged for services for repairs or renovations of tangible personal property . . ." The CORPORATION-1 employees were repairing and maintaining the Taxpayer's forklifts and trucks and that was not in dispute. There was some assertion at the hearing that CORPORATION-1 employees also performed some other services for the Taxpayer, like answering telephones or emails, but the Taxpayer did not present evidence on how much of this work was for repair or renovation of tangible personal property and how much was for the other miscellaneous duties.

Absent evidence that the majority of these charges related to something other than repair or renovation of tangible personal property, the issue is whether the amounts paid by the Taxpayer to CORPORATION-1 were amounts "paid for" services to repair or renovate this equipment. The Taxpayer cites to the recent decision of the *Utah Supreme Court in Rent-A-Center v. Utah Tax Commission*, 2016 UT 1. In *Rent-A-Center*, the Court considered the sales tax imposed under Utah Code Sec. 59-12-103(1)(k) on leases and rentals of tangible personal property, which is a different subsection from the one at issue but also imposes a tax using similar language to the subsection at issue in this matter. Utah Code Sec. 59-12-103(1)(k) imposes sales tax on "amounts paid or charged for leases or rentals of tangible personal property." The court in

*Rent-A-Center* in analyzing what was meant in the statute by “paid or charged for” provided the following guidance:

“In determining the ordinary meaning of nontechnical terms of a statute, our ‘starting point’ is the dictionary” because it “is useful in cataloging a range of possible meanings that a statutory term may bear.” *State v. Canton*, 2013 UT 44, ¶13, 308 P.3d 517 (citation omitted). It is merely a starting point, however, because these possible definitions “will often fail to dictate ‘what meaning a word must bear in a particular context.’” *High-Country Prop. Rights Grp. v. Emmer*, 2013 UT 33, ¶19, 304 P.3d 851 (citation omitted). Where this is the case, we must identify the meaning of the statutory language “based on other indicators of meaning evident in the ‘context of the statute (including, particularly, the structure and language of the statutory scheme).” *Id.* (citation omitted).

*Rent-A-Center v. Utah Tax Commission*, 2016 UT 1, ¶15. The court goes on to note the dictionary definition of “pay for” was “giving ‘money or other equivalent for goods or services.’” *Citing* the Oxford English Dictionary, [www.oed.com](http://www.oed.com). *Id.* ¶16.

In the subject case, the Taxpayer was paying employees of CORPORATION-1 to provide the service of repairing its equipment and vehicles. Taxpayer provided the parts, but CORPORATION-1’s employees provided the services. Payment was not based on invoicing, but instead done through internal accounting based on employees’ timesheets. Petitioner is correct that Utah Code Sec. 59-12-103(1)(g) is a tax imposition statute. Under Utah Code Sec. 59-1-1417(2), the Commission is to construe a statute imposing a tax, fee, or charge strictly in favor of the taxpayer. However, it does appear that the essence of this transaction is the Taxpayer giving money for the services of repairing equipment. Based on the plain language of Utah Code Sec. 59-12-103(1)(g), these transactions are subject to tax because it is giving money for this taxable service. Had Taxpayer and CORPORATION-1 not separated into two entities and divided employees in this manner there may be a different result. However, as noted by the Utah Supreme Court in *Ivory Homes v. Tax Commission*, 2011 UT 54, ¶16, “when a taxpayer has chosen to conduct business under a particular arrangement, it cannot disregard the consequences of that arrangement when it would otherwise be to the taxpayer’s disadvantage (citation omitted).”

At the hearing the Taxpayer alleged that some of the transactions captured in Schedule 5 had been employee reimbursements for things other than the repair of the equipment and vehicles. The Taxpayer explained that there was only one account number assigned for CORPORATION-1’s employees providing labor to the Taxpayer and sometimes the work these employees performed had nothing to do with the repair of machinery and equipment. The Taxpayer alleged that sometimes the employee would be needed to answer telephones or emails,

for administrative assistance or other tasks. The Taxpayer argues that it is the Division that should have determined this while performing the audit. However, it is undisputed that much of the services provided by employees listed in this account were for repair of tangible personal property. If, in fact, some of the employee labor in this category was not for the services of repairing tangible personal property, it would be up to the Taxpayer to show that the various charges related to something other than repair of equipment and vehicles. Although for purposes of statutory construction, or basically the interpretation of a statute, a tax imposition statute is strictly construed in favor of the taxpayer under Utah Code Sec. 59-1-1417(2), when providing evidence necessary to support the facts claimed, the burden of proof is on the petitioner under Utah Code Sec. 59-1-1417(1). The Taxpayer has not proved that some of the transactions listed in this account are payment for something other than the repair and renovation of tangible personal property. The appeal should be denied.

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

Appeal No. 15-680

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 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.**