

15-1941

TAX TYPE: SALES & TRANSIENT ROOM TAX

TAX YEAR: 7/1/2012 – 6/30/2015

DATE SIGNED: 11-7-2016

COMMISSIONERS: J VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</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;">INITIAL HEARING ORDER</p> <p>Appeal No. 15-1941</p> <p>Account No. #####</p> <p>Tax Type: Sales & Transient Room Tax</p> <p>Tax Year: 7/1/2012 – 6/30/2015</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, Owner, PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General
RESPONDENT-1, Assistant Director, Auditing Division
RESPONDENT-2, Audit Manager
RESPONDENT-3, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on August 4, 2016 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner had timely filed an appeal under Utah Code Sec. 59-1-501 of a Statutory Notice-Sales and Use Tax, which had been issued by Respondent (“Division”) on November 10, 2015 and the matter proceeded to the Initial Hearing. The amount of the audit deficiency was \$\$\$\$ in sales and transient room tax. Interest accrued to the notice date to \$\$\$\$\$, which continues to accrue on the unpaid balance. There was no penalty assessed with the audit. The audit tax was based on nightly property rental income the Petitioner had received for periodically renting out a residential property over the period of July 1, 2012 through June 30, 2015.

APPLICABLE LAW

Sales and use tax is imposed under Utah Code Subsection 59-12-103(1)¹ on the following:

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

...

- (i) Amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

...

The term “regularly rented” for purposes of the Utah Sales and Use Tax act is defined at Utah Code Subsection 59-12-102(101) as follows:

“Regularly rented” means: (a) rented to a guest for value three or more times during a calendar year; or (b) advertised or held out to the public as a place that is regularly rented to guests for value.

Counties are authorized to impose the transient room tax under Utah Code Subsection 59-12-301(1)² which provides:

- (a) A county legislative body may impose a tax on charges for the accommodations and services described in Subsection 59-12-103(1)(i) at a rate of not to exceed 4.25% beginning on or after October 1, 2006.
- (b) Subject to Subsection (2), the revenues raised from the tax imposed under Subsection (1)(a) shall be used for the purposes listed in Section 17-31-2.
- (c) The tax imposed under Subsection (1)(a) shall be in addition to the tax imposed under Part 6, Tourism, Recreation, Cultural, Convention, and Airport Facilities Tax.

Utah Administrative Rule R865-19S-79 provides guidance concerning the taxes imposed on sales of accommodations, as follows in pertinent part:

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

- 1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

....

1 This decision cites to the 2015 Utah Code and Administrative Rule Sections for ease of references. However, there were not any substantive changes to these provisions during the audit period from July 1, 2012 to June 30, 2015.

2 The governing body of a city may also impose transient room tax of up to 1.5% under Utah Code Secs. 59-12-352 & 59-12-353.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

Utah Code Subsection 59-1-401(14) provides:

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 Admin. Rule R865-1A-42(2) ("Rule 42") provides guidance concerning the waiver of interest, as follows:

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

Utah Code Sec. 59-1-1417 provides for both burden of proof and statutory construction in this matter 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

Petitioner's representative explained that in 2012 he and his spouse formed PETITIONER in STATE-1, as a STATE-1 limited liability company, and started renting out a residence which they owned at ADDRESS-1, CITY-1, Utah as a nightly vacation rental by owner. (The representative or his spouse will be referred to as "Taxpayer" or "Taxpayers" in this decision.) They also owned some units in CITY-2 and were renting those out as vacation rentals. The Taxpayer explained that they were not sure if these types of rentals were subject to sales tax and so they called the Utah State Tax Commission. He states that they were told over the telephone that information was available on the Tax Commission's website. He explained that they did search the website for information about this type of vacation rental and that they never were able to find any information. He also indicated that the INTERNET WEBSITE and other similar internet websites were new at this time and did not have information about whether sales tax needed to be charged either. The Taxpayers listed their CITY-1 residence on the INTERNET

WEBSITE site and leased it out when they were not using the residence. They also indicated that it seemed to them that other vacation rental by owners were not charging sales tax, so they went ahead with the vacation rentals and did not charge sales or transient room tax to their customers. They point out that now they would have to come up with nearly \$\$\$\$ out of their own pocket which they will not be able to recoup from the renters.

In August 2015, the Division started mailing self-review audits on vacation rental properties. One of these self-reviews was sent to the Taxpayers and they did fill out and send the information in, which indicated the amount they had received for vacation rentals on their CITY-1 property. The audit tax deficiency was based on the self-review information provided by the Taxpayer. The representative for the Division explained that this was not the first time the Division had mailed self review audits to people leasing vacation rentals by owner and that the Division issued these about every three years. He indicated that in this review the Division had issued more than 1000 letters to vacation rental property owners. He also indicated that the information about sales and transient room tax was on the Utah State Tax Commission website and Publication 56 was available explaining these taxes in 2012. It was his contention that the Taxpayers should have called back when they were unable to find the information on the website after being told that it was there.

Now that they were aware of the sales and transient room tax provisions, the Taxpayers did not dispute that these laws applied to their Utah vacation rental income from their CITY-1 property. They did not dispute that the property was rented to guests for value three or more times a year or advertised or held out to the public as a place that is regularly rented. From the self audit information they had provided they had received income from this property in every quarter beginning with January 1, 2013. It was the Taxpayers' position at this hearing that the Tax Commission should have been more helpful in providing them information and telling them that these rentals were subject to sales and transient room tax back in 2012 when they had tried to find out if there was a tax on the rentals and should have been better at getting information to the industry about charging sales and tourism tax. They state had they known there was a tax, they would have charged tax to their customers and remitted it to the state. Now they will have to pay the tax out of their own pocket. It was the Taxpayers' assertion that it would be reasonable for the Tax Commission to accept \$\$\$\$ as payment in full, because of the confusion.

The Tax Commission does not have statutory authority to abate a tax based on a taxpayer's ignorance of the law and has not done so in prior decisions. This is similar to the argument made by a property owner of another vacation rental property in *Utah State Tax Commission Initial Hearing Order, Appeal 13-630* (June 13, 2014). In that appeal, similar to the

subject appeal, a property owner was leasing a residential property as a tourist or vacation rental when it was not being used by the property owner or owner's family. The Division had audited that property owner for a period covering 7 years of rentals. That property owner had argued for abatement of the audit because he was unaware of the law. In *Appeal 13-630*, pg. 7, the Tax Commission held, "The commission has regularly found that ignorance of the law does not excuse a taxpayer from paying the taxes that he or she legally owes."³

No penalties were assessed with the audit. The Tax Commission does have authority to waive or reduce interest pursuant to Utah Code Subsection 59-1-401(14). However, Utah Admin. Rule R865-1A-42(2) provides, "To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error." In this case the Taxpayer argues that the Tax Commission employee over the telephone should have been more helpful and told them their rental was subject to sales and transient room tax, instead of referring the Taxpayer to the Tax Commission Website. The representative for the Division counters that the Taxpayers should have called back when they could not find the information on the website. There is currently considerable information on the Tax Commission's website.⁴ The Division stated Publication 56 was available on the website in 2012. Currently on the website under prior year's publications there is a Publication 56 that indicates it was "Revised 7/13."⁵ This publication states, "Amounts paid for temporary lodging are subject to both sales tax and transient room tax." "Temporary lodging is the use of accommodations in a hotel, motel, inn, tourist home, trailer court or campground (or similar accommodation) for less than 30 consecutive days." It is unknown what the Taxpayer would have found back in 2012. The Taxpayer has not shown it was given erroneous information or a Tax Commission employee took inappropriate action and there is no basis for waiver of the interest. The audit tax and interest should be upheld.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

³ This and other Utah State Tax Commission decisions are available in a researchable format at tax.utah.gov/commission-office/decisions.

⁴ Typing in "vacation rental" in the search bar on the Tax Commission's website at the time this decision was written shows considerable information, including a *Utah State Tax Commission Initial Hearing Order, Appeal No. 08-2006* (January 15, 2009) which involved sales and transient room tax on a vacation rental.

⁵ <http://tax.utah.gov/forms/pubs/pub-56.pdf>.

Based on the foregoing, the Commission sustains the audit deficiency of sales and transient room tax and interest for the audit period of July 1, 2012 through June 30, 2015. 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 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.