

19-1853

TAX TYPE: SALES AND USE TAX

TAX YEAR: 2018

DATE SIGNED: 3/05/2021

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L WALATERS

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 19-1853 Tax Type: Audit – Sales and Use Tax Tax Year: 2018 Account No.: #####-STC Judge: Jensen
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Presiding:

Lawrence C. Walters, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, Taxpayer
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
 RESPONDENT-1, for the Division
 RESPONDENT-2, for the Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 3, 2020. Based on the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. In December 2015, the Taxpayer leased a 2015 VEHICLE MAKE AND MODEL from VEHICLE Lease Trust at DEALERSHIP VEHICLE in CITY-1, STATE-1(the “VEHICLE”).
2. The lease was for 39 months through February 2019, with an option to purchase the vehicle at the end of the lease.
3. In the later part of 2018, the Taxpayer was living in Utah and was experiencing what he described as a need to generate cash and reduce expenses.

4. The Taxpayer considered his options with regard to the lease on the VEHICLE. He described those options as follows: 1) turn the VEHICLE back to VEHICLE Lease Trust; 2) keep the VEHICLE; or 3) buy out the lease and re-sell the VEHICLE. He indicated that the terms with VEHICLE Lease Trust made turning in the VEHICLE an undesirable option.

5. The Taxpayer testified that he liked the VEHICLE, but felt that he could not afford to keep it. This left buying out the lease and re-selling the VEHICLE to be what he considered his most attractive option.

6. The Taxpayer testified that he listed the VEHICLE for sale and found a buyer by placing an online advertisement.

7. A buyer in CITY-2, Utah agreed to buy the VEHICLE for \$\$\$\$ on December 7, 2018. The buyer took possession of the VEHICLE on December 7, 2018.

8. The same day that the Taxpayer and the buyer reached an agreement for the sale and the buyer took possession of the VEHICLE, the Taxpayer contacted VEHICLE Lease Trust to gain instructions on how to pay off the lease and obtain the title.

9. The Taxpayer described sending an odometer disclosure statement, title release information, and an electronic funds transfer of \$\$\$\$¹ to VEHICLE Lease Trust.

10. The funds described in Paragraph 9 had come from the buyer, who agreed to trust the Taxpayer to deliver the title when it became available from VEHICLE Lease Trust.

11. VEHICLE Lease Trust recorded the lease buyout on December 17, 2018 and sent the title to the Taxpayer.

12. On January 8, 2019, after receiving the STATE-1 title from VEHICLE Lease Trust, the Taxpayer testified that he took the title to the CITY-3 DMV office and asked how to get the title issued in the buyer's name.

¹ The Taxpayer testified that the lease payoff would have been \$\$\$\$ had he retained the VEHICLE until the expiration of the lease.

13. The Taxpayer described speaking with a person he identified as having a first name of NAME-1, who instructed the Taxpayer to sign the title as purchaser then sign the title over to the person who had agreed to buy the VEHICLE.

14. The Taxpayer testified that he followed the instructions he received at the CITY-3, Utah DMV office and paid no sales and use tax. He indicated that this made sense to him inasmuch as the buyer would be paying sales and use tax on his purchase of the VEHICLE for \$\$\$\$\$.

15. The Taxpayer did not have possession of the VEHICLE at any time after December 7, 2018.

16. On August 15, 2019, the Division issued a Utah Tax Audit Report imposing \$\$\$\$\$ in sales and use tax in connection with what the Division determined was the Taxpayer's purchase of the VEHICLE from VEHICLE Lease Trust.

17. The Taxpayer timely appealed the Division's findings and the case proceeded to a Formal Hearing.

18. The Taxpayer argued that he should not have to pay sales and use tax on a car that he bought for the sole purpose of resale to another buyer.

19. The Taxpayer pointed out that the buyer, a Utah resident, had to pay sales and use tax when he registered the VEHICLE after he purchased it.

APPLICABLE LAW²

Utah Code Ann. §59-12-103(1)(a) imposes a sales and use tax on the purchaser for "retail sales of tangible personal property made within the state."

Utah Administrative Rule R865-19S-2 provides additional information regarding the nature of tax imposed under Utah Code Ann. §59-12-103 as follows:

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

² Unless noted otherwise, the Commission cites the 2018 version of Utah Code.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

Utah Code Ann. §59-12-102(109) defines “retail sale” as “a sale, lease, or rental for a purpose other than: (a) resale; (b) sublease; or (c) subrent.”

Utah Code Ann. §59-12-102(116) defines “[s]eller” as “a person that makes a sale, lease, or rental of: (a) tangible personal property; (b) a product transferred electronically; or (c) a service.”

Utah Code Ann. §59-12-102(136) defines “[u]se” as follows:

(a) "Use" means the exercise of any right or power over tangible personal property, a product transferred electronically, or a service under Subsection 59-12-103(1), incident to the ownership or the leasing of that tangible personal property, product transferred electronically, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of tangible personal property, a product transferred electronically, or a service in the regular course of business and held for resale.

Utah Code Ann. §59-12-104 provides for exemptions from sales and use tax for certain transactions as follows, in pertinent part:

- (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of this state if the vehicle is:
 - (a) not registered in this state; and
 - (b)(i) not used in this state; or
 - (ii) used in this state:
 - (A) if the vehicle is not used to conduct business, for a time period that does not exceed the longer of:
 - (I) 30 days in any calendar year; or
 - (II) the time period necessary to transport the vehicle to the borders of this state; or
 - (B) if the vehicle is used to conduct business, for the time period necessary to transport the vehicle to the borders of this state;

...

- (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property . . . by a person . . . not regularly engaged in the business of selling that type of tangible personal property . . .

(b) this Subsection (13) does not apply if . . . the sale is of a vehicle or vessel required to be titled or registered under the laws of this state . . .

(25) a product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

Utah Code Ann. §59-12-107(7) requires payment of sales or use tax directly to the Commission on a vehicle from someone other than a licensed vehicle dealer as follows in pertinent part:

- (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to titling or registration under the laws of this state.
- (b) The commission shall collect the tax described in Subsection (7)(a) when the vehicle is titled or registered.

Utah Code Ann. §41-1a-201 provides that “[u]nless exempted, a person may not operate and an owner may not give another person permission to operate a motor vehicle, combination of vehicles, trailer, semitrailer, vintage vehicle, off-highway vehicle, or vessel in this state unless it has been registered”

Utah Code Ann. §41-1a-501 requires a certificate of title upon the purchase of a motor vehicle as follows:

Unless exempted, each owner of a motor vehicle, vessel, outboard motor, trailer, semitrailer, manufactured home, mobile home, or off-highway vehicle shall apply to the division for a certificate of title on forms furnished by the division as evidence of ownership.

Utah Code Ann. §41-3-201(2)(a) provides that a person may not act as a “dealer” without having procured a license issued by the Motor Vehicle Enforcement Administrator.

Utah Code Ann. §41-3-102(9) defines “dealer” as follows:

- (a) "Dealer" means a person:
 - (i) whose business in whole or in part involves selling new, used, or new and used motor vehicles or off-highway vehicles; and
 - (ii) who sells, displays for sale, or offers for sale or exchange three or more new or used motor vehicles or off-highway vehicles in any 12-month period.
- (b) "Dealer" includes a representative or consignee of any dealer.

Utah Code Ann. §41-1a-701(1) governs vehicle registrations following the sale of a vehicle as follows:

(1) If the owner of a registered vehicle transfers his title or interest to the vehicle the registration of the vehicle expires. The owner shall remove the license plates from the transferred vehicle.

Utah Code Ann. §59-1-1417 provides guidance regarding both burden of proof and statutory construction in matters before the Tax Commission as follows:

- (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.
- (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.

CONCLUSIONS OF LAW

Statutory Interpretation and Determination of “Retail Sale”

The parties agree that Utah Code Ann. §59-12-103(1)(a) imposes a sales and use tax on the purchaser for “retail sales of tangible personal property made within the state.” They agree that Utah Code Ann. §59-12-102(109) defines “retail sale” as “a sale, lease, or rental for a purpose other than: (a) resale; (b) sublease; or (c) subrent.” At this point, the parties differ. The Taxpayer’s position is that because his sole purpose in buying the vehicle in this case was to resell it, his purchase was not a “sale . . . for a purpose other than . . . resale” under Utah Code Ann. §59-12-102(109)(a). The Division’s position is that the transaction in which the Taxpayer purchased the vehicle was a sale “for a purpose other than . . . resale.”

The Utah Sales and Use Tax Act, Utah Code Ann. §59-12-101 *et. seq.*, (“the Act”) does not directly define a “sale for resale.” Utah Code Ann. §59-12-102, the main definition portion of the Act, is silent with regard to defining “sale for resale” or “resale.” However, a later section of the Act relating to exemptions, Utah Code Ann. §59-12-104(25), provides additional information regarding sales for resale by exempting from sales and use tax “a product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product.” The lack of a direct definition for resale in one part of the Act requires the Commission to look to accepted principles of statutory construction.

When interpreting statutes, Utah courts are to “read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters.” *Miller v. Weaver*, 2003 UT 12, ¶17, 66 P.3d 592. Under this principle of statutory construction, there is good cause for the Commission to harmonize the use of the term “resale” in Utah Code Ann. §59-12-102(109)(a) with the use of the same word in the same chapter in Utah Code Ann. §59-12-104(25). This subsection provides an exemption for sales of “a product purchased for resale in this state. . . in the regular course of business.”

In this case, it is clear that the Taxpayer did not purchase a vehicle for resale in the regular course of his business. To have a regular course of business of buying and selling motor vehicles would require automobile dealer licensing under Utah Code Ann. §41-3-201(2). The Taxpayer did not hold an automobile dealer’s license. Because the sale at issue in this case is not an exempt sale for resale, Utah Code Ann. §59-12-103(1)(a) imposes a sales and use tax on the Taxpayer as a purchaser in a “retail sale of tangible personal property made within the state.”

Possible Exemption under Utah Code Ann. §59-12-104(9)

At the Formal Hearing for this case, the parties discussed possible exemptions such as Utah Code Ann. §59-12-104(9), which provides for an exemption for certain transactions as follows:

sales of a vehicle of a type required to be registered under the motor vehicle laws of this state if the vehicle is:

- (a) not registered in this state; and
- (b) (i) not used in this state; or
- (ii) used in this state:
 - (A) if the vehicle is not used to conduct business, for a time period that does not exceed the longer of:
 - (I) 30 days in any calendar year; or
 - (II) the time period necessary to transport the vehicle to the borders of this state; or
 - (B) if the vehicle is used to conduct business, for the time period necessary to transport the vehicle to the borders of this state;

Applying Utah Code Ann. §59-12-104(9), the Commission notes that there were two transactions present under the facts of this case. As separate transactions, each could be subject to sales and use tax. *See* Utah Administrative Rule R865-19S-2 (providing that “sales and use taxes are transaction taxes” and that sales and use tax “is not upon the articles sold or furnished, but upon the transaction”). The first transaction is from VEHICLE Lease Trust to the Taxpayer as buyer. The second transaction is from the Taxpayer as seller to a separate buyer. The parties agree that the second transaction was a taxable transaction and that the buyer in that transaction, a CITY-2 resident, paid sales and use tax upon titling and registering the VEHICLE. Inasmuch as the second transaction is not at issue in this case, the Commission will not further consider it except as necessary to determine timing and use under the first transaction.

Focusing on the first transaction, the parties agree that this was a transaction in which the Taxpayer purchased the VEHICLE from VEHICLE Lease Trust. One of the requirements for exemption of this transaction under Utah Code Ann. §59-12-104(9) is that the vehicle must be “not used in this state” or, if “used in this state” the use must qualify under additional requirements for type and duration of use. Utah Code Ann. §41-1a-201 provides additional requirements regarding vehicle use. It provides that “an owner may not give another person permission to operate a motor vehicle . . . in this state unless it has been registered.” Applying this requirement in Utah Code Ann. §41-1a-201, the Taxpayer allowed another to operate the VEHICLE. When the Taxpayer delivered the VEHICLE to the buyer on December

7, 2018, the Taxpayer's registration would have still been in effect. But after the Taxpayer's registration expired upon VEHICLE Lease Trust's transferring its title or interest to the vehicle on December 17, 2018, any operation of the VEHICLE on Utah highways without registration of some type would be in violation of Utah Code Ann. §41-1a-201. Nothing in the facts of this case suggests that the person to whom the Taxpayer provided the VEHICLE did not drive the vehicle in violation of Utah Code Ann. §41-1a-201. Furthermore, the Taxpayer gave no testimony that he removed his license plates from the VEHICLE as required by Utah Code Ann. §41-1a-701(1).

It is an appropriate role for the Commission to interpret an exemption "strictly against the taxpayer" as required by Utah Code Ann. §59-1-1417, and thus to interpret the exemption narrowly and in harmony with other motor vehicle laws. It is clear under Utah Code Ann. §41-1a-201, "an owner may not give another person permission to operate a motor vehicle, combination of vehicles, trailer, semitrailer, vintage vehicle, off-highway vehicle, or vessel in this state unless it has been registered." It is also clear under Utah Code Ann. §59-12-107(7) that "the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to titling or registration under the laws of this state."

The Commission interprets the phrase "used in the state" under the exemption provided in Utah Code Ann. §59-12-104(9) in a manner that harmonizes with other motor vehicle laws. *See Miller v. Weaver, 2003 UT 12, ¶17, 66 P.3d 592.* The term "use" under Utah Code Ann. §59-12-102 provides that "use" includes "the exercise of any right or power over tangible personal property . . . incident to the ownership or the leasing of that tangible personal property." There is good cause for the Commission to conclude in this case that "used in the state" means a lawful use of a vehicle in this state, which would not include an owner authorizing another person to operate an unregistered vehicle in Utah. Under the facts of this case, there is not good cause to find that the Taxpayer is entitled to exemption under Utah Code Ann. §59-12-104(9).

Possible Exemption Under Utah Code Ann. §§59-12-104(13)(a) and (25).

The exemption in Utah Code Ann. §59-12-104(13)(a) for “the sale of tangible personal property . . . by a person . . . not regularly engaged in the business of selling that type of tangible personal property” does not apply to the facts of this case. Utah Code Ann. §59-12-104(13)(b) goes on to provide that “this Subsection (13) does not apply if . . . the sale is of a vehicle or vessel required to be titled or registered under the laws of this state.” As indicated earlier, the VEHICLE is a “vehicle . . . required to be titled or registered under the laws of this state.” For this reason, the exemption in Utah Code Ann. §59-12-104(13) does not apply in this case.

The exemption in Utah Code Ann. §59-12-104(25) does not apply in this case. As previously discussed, Utah Code Ann. §59-12-104(25) applies only to a product purchased for resale in this state “in the regular course of business.” The Taxpayer did not buy then sell the VEHICLE in the regular course of his business.

Conclusion

That the VEHICLE was subject to titling or registration in the state, regardless of whether it was actually registered in the state, triggered the requirement to pay sales and use taxes on the transaction under Utah Code Ann. §59-12-107. Furthermore, the transaction from VEHICLE Lease Trust to the Taxpayer is a sale of tangible personal property that is not exempt from sales and use taxation nor excluded from the sales and use tax base, so is subject to sales and use taxation even without considering the application of Utah Code Ann. §59-12-107.

DECISION AND ORDER

Based on the foregoing, the Commission upholds the Division’s audit assessment of sales and use tax and interest. It is so ordered.

DATED this ____ day of _____, 2021.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner