

APPEAL # 21-1649  
TAX TYPE: SALES AND USE TAX  
TAX YEAR: 2021  
DATE SIGNED: 7/11/2023  
COMMISSIONERS: J.VALENTINE, M.CRAGUN, AND J.FRESQUES  
EXCUSED/RECUSED: R.ROCKWELL

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BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYER,

Petitioner,

v.

BUSINESS TAXES AND DISCOVERY  
DIVISION<sup>1</sup> OF THE UTAH STATE TAX  
COMMISSION,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND FINAL DECISION**

Appeal No. 21-1649  
Account No: #####  
Tax Type: Audit - Sales & Use Tax  
Tax Year: 2021  
  
Judge: Phan

**Presiding:**

Jennifer N. Fresques, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER, Taxpayer  
For Respondent: RESPONDENT'S REP-1, Assistant Attorney General  
RESPONDENT'S REP-2, Assistant Attorney General  
RESPONDENT'S REP-3 Tax Examiner Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 12, 2023, in accordance with Utah Code Ann. §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

Factual Background

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<sup>1</sup> Due to a reorganization at the Tax Commission, the name of the Tax Commission Division that was the Respondent in this matter has been changed.

1. On September 3, 2021, Respondent (the “Division”) issued a sales and use tax audit deficiency against the Petitioner (“Taxpayer”) in the amount of \$\$\$\$ in additional tax, a \$\$\$\$ fraud penalty, and interest, which continues to accrue.<sup>2</sup>

2. The subject of the audit deficiency and penalty was the sales tax due on the Taxpayer’s purchase of a motor vehicle. The Taxpayer purchased the vehicle on or around DATE.<sup>3</sup> When the Taxpayer registered the vehicle and submitted the Vehicle Application for Utah Title, on or around DATE, the Taxpayer submitted a Bill of Sale to the Motor Vehicle Division of the Utah State Tax Commission that indicated the purchase price of the vehicle was \$\$\$\$<sup>4</sup> and paid sales tax on the claimed \$\$\$\$ purchase price. The Division concluded in its audit that the actual purchase price had been \$\$. The Division calculated the sales tax deficiency on the difference between the \$\$\$\$ and the \$\$\$\$ to be the \$\$\$\$ audit tax deficiency and assessed the fraud penalty, which pursuant to Utah Code Ann. §59-1-401(7)(a) is equal to 100% of the tax deficiency.

3. The Taxpayer timely appealed the audit deficiency and the matter proceeded to the subject Formal Hearing. At the Formal Hearing, the Taxpayer did not contest the audit tax deficiency and had paid an amount equal to the tax, but instead she asked for a waiver of the \$\$\$\$ fraud penalty.

4. Based on the appeal record, the appeal had originally been scheduled for an Initial Hearing on DATE. The Taxpayer had defaulted the Initial Hearing, but requested the matter to be scheduled for a Formal Hearing. The Formal Hearing was originally scheduled for DATE, which the Taxpayer defaulted and did not attend the hearing. The default was set aside and the Formal Hearing was rescheduled, but continued at the Taxpayer’s request before the Formal Hearing was finally commenced and held on DATE.

#### Taxpayer’s Evidence

5. The Taxpayer did not submit any exhibits at the Formal Hearing and her statement of her recollection of the events was somewhat unclear.

6. At the hearing, the Taxpayer testified that this was the first time she had purchased a vehicle from someone other than a family member. She testified that her prior two vehicles had been purchased from her older sister and her older brother.

7. She testified that she had obtained a loan from BUSINESS-1 and that they had actually finalized the paperwork for the sale at the credit union. She states at the hearing that she had no intention to try to “manipulate anything” and there was “no hope for anything” that she

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<sup>2</sup> Respondent’s Exhibit 3. Interest accrues on an audit balance until the balance due resulting from the appeal is paid in full.

<sup>3</sup> Respondent’s Exhibits 4 & 5.

<sup>4</sup> Respondent’s Exhibit 4.

just did not know what she was doing. She also stated that the purchase price was \$\$\$\$ as far as the loan amount, but that she had also paid the seller some cash. The Taxpayer testified that the documents for the vehicle purchase were already filled out when she arrived at the credit union. She stated that “we were at the bank. I signed the paper.” She also stated that she had glanced at the bill of sale and saw the ##### and the #####s after. Regarding her signing the documents she stated, “It was a signature and looking briefly and seeing numbers and looking like everything was correct.” The Taxpayer testified that she knew she was buying a car, and that those documents needed to be signed. The Taxpayer testified that it was an “ignorant” mistake.

8. The Division had submitted as an exhibit the Vehicle Application for Utah Title, which was signed by the Taxpayer and submitted by the Taxpayer to the Division of Motor Vehicles.<sup>5</sup> On that document there is a line to fill in the purchase price and on that line \$0.00 had been filled in. The Taxpayer testified that she thought this document had been filled out by the bank and that she had just signed the application. The answers in the application had been typed in and were not handwritten.

9. The Division also submitted as an exhibit the Bill of Sale for the vehicle, which was signed by the seller of the vehicle and the Taxpayer.<sup>6</sup> The Bill of Sale lists SELLER-1 as the seller and the Taxpayer as the buyer. Much of the information was typed onto the Bill of Sale, except the purchase price amount. On the line for the purchase price someone had handwritten in \$\$\$\$\$. The Taxpayer testified at the hearing that she did not fill out this amount, that she just signed the Bill of Sale as it had been prepared for her. The \$\$\$\$\$ had been written with a distinctly left sided slant. Someone had also hand written in the state, county and date, just above the Taxpayer's signature. These also appeared very similar in writing style to the \$\$\$\$\$ and consistent with the Taxpayer's signature. They were also of a similar ink color. The seller, SELLER-1, had also signed the Bill of Sale. The seller's signature had a distinctly right slanted style and was much darker in ink color. Regarding this document, the Taxpayer did not dispute that this was the bill of sale she had submitted to register the vehicle and it indicated a purchase price of \$\$\$\$\$. However, the Taxpayer testified that she just signed the documents that were presented to her.

10. The Division had also submitted with the evidence documents the letter that the Taxpayer had written when she filed her appeal on DATE.<sup>7</sup> The letter was written much nearer in time to the purchase transaction when events would have been more clear in the Taxpayer's mind. In the letter the Taxpayer stated:

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<sup>5</sup> Respondent's Exhibit 4, pg. AUD 011.

<sup>6</sup> Respondent's Exhibit 4, pg. AUD 012.

<sup>7</sup> Respondent's Exhibit 2, pg. AUD 004.

This year I purchased a vehicle from someone on KSL. I am 20 years old and this was my first purchase outside of family. At the bank the loan officer said he would leave the bill of sale up to us, of course not knowing what that meant I left it up to the person selling me the vehicle. He filled it out and upon arrival to the DMV the lady helping me [there] told me it had to be signed by me. I quickly scribbled my signature and paid what I thought was the correct amount.

11. The Taxpayer's letter was handwritten. Her writing tended to have a left sided slant and was similar to the handwriting that had filled in "\$\$\$\$" as the purchase price on the bill of sale.

#### Division Evidence

12. It is the Division's position that the actual purchase price of the vehicle had been \$\$\$\$ and not the \$\$\$\$ that the Taxpayer had stated at the hearing. The Division provided copies of the loan application the Taxpayer had filled out with BUSINESS-1 and copies of the checks issued as the distribution of the loan proceeds.<sup>8</sup> These indicated the loan amount was \$\$\$\$ and the loan distributions totaled \$\$\$\$\$. The checks show that \$\$\$\$ was distributed to BUSINESS-2 and \$\$\$\$ was distributed directly to SELLER-1, the seller of the vehicle. The loan application was dated DATE, so this was done at the same time the Taxpayer purchased the vehicle.

13. As noted above, the Division had also submitted a copy of the Vehicle Application for Utah Title, which the Taxpayer had stated had been prepared for her and she had just signed.<sup>9</sup> All the information filled out on this application had been typed in. When asked at the hearing if the Division of Motor Vehicle employee would have typed this information in while the Taxpayer was applying for the title and registration, the Division's witness stated that it looked to him like it was the credit union that had prepared the document. This document had "\$\$\$\$" filled in as the purchase price. The Vehicle Application had the Taxpayer's signature under a certification indicating, "I declare that I am the owner of the vehicle described in this application and that all of the above information is accurate and true . . . ."

14. As noted above, the Division had submitted as evidence the Bill of Sale on which someone had handwritten in the purchase price amount of \$\$\$\$\$. The Bill of Sale was signed by the Taxpayer. It was the Division's position that the Taxpayer had signed her signature saying that the purchase price had only been \$\$\$\$ when she knew that was not the correct purchase price amount and by doing this the Taxpayer had paid sales tax on only the \$\$\$\$ instead of the correct sales tax amount based on the \$\$\$\$ purchase price which was evidenced by the car loan.

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<sup>8</sup> Respondent's Exhibit 5, pgs. AUD 14-22.

<sup>9</sup> Respondent's Exhibit 4.

15. The Division asked that the Commission sustain the penalty, noting that Utah Code Ann. §59-1-401(7)(a)(iv) provides for a penalty of the greater of \$500 or 100% of the underpayment of tax if any portion of an underpayment is due to fraud with intent to evade a tax.

Commission Factual Analysis

16. Reviewing the evidence in this case, there is no dispute that the bill of sale signed by the Taxpayer and used by the Taxpayer to register the vehicle indicated a purchase price of only \$\$\$\$\$. There is no dispute that the Taxpayer knew that \$\$\$\$\$ was not the actual purchase price. There is no dispute that the Taxpayer used the bill of sale to register the vehicle and paid \$\$\$\$\$ in sales and use tax when \$\$\$\$\$ was the amount due.<sup>10</sup> The only issue on which the parties disagree is the Division's characterization of the Taxpayer's actions as fraud with intent to evade the tax and the Taxpayer's characterization of the same events as an innocent mistake with the inadvertent result of saving \$\$\$\$\$ in sales and use tax.

17. Although the Taxpayer had stated that she just signed documents others filled out, the \$\$\$\$\$ purchase listed on the Bill of Sale on its face appears to have been filled out by the Taxpayer. It seems likely that the credit union did fill out the typed sections on the Bill of Sale and left the purchase price blank. It does not look like the purchase price amount was filled out by the seller, because his handwriting was different in style and was a noticeably darker color ink. The color of ink and style of writing for the \$\$\$\$\$ was similar to the Taxpayer's signature on the document. If the Taxpayer did not know listing a smaller purchase price would result in less tax, as she has stated, it is unclear what other motivation she had to list \$\$\$\$\$, when the actual price had been \$\$\$\$\$ or even more based on her testimony that she had paid the loan amount plus some cash to the seller. Regardless, she had signed and submitted a Bill of Sale with a substantially understated purchase price with her vehicle registration form that resulted in substantially less sales tax than she owed at the time. She had also signed and submitted the Vehicle Application for Utah Title document stating the purchase price was \$\$\$\$\$.

APPLICABLE LAW

Utah Code §59-12-103(1)(a) provides for a tax on retail sales of tangible personal property made within the state.

Utah Code §59-12-103(1)(l) provides for sales and use tax to be imposed on the purchase price or sales price for amounts paid or charged for tangible personal property if within this state the tangible personal property is: (i) stored; (ii) used; or (iii) consumed.

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<sup>10</sup> The tax rate for sales and use tax was 7.15%. The amount of \$\$\$\$\$ was the sales and use tax calculated on the \$\$\$\$\$ purchase price based on the bill of sale. The amount of \$\$\$\$\$ would be the sales and use tax of the actual \$\$\$\$\$ purchase price.

Utah Code §59-12-107(7) provides how the sales or use tax is to be paid to the state of Utah on motor vehicle sales as follows:

- (7)
  - (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. §59-1-401(7)(a) provides for penalties on certain tax underpayments as follows:

- (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax, fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that is due to negligence.
- (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire underpayment.
- (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge, the penalty is the greater of \$500 per period or 50% of the entire underpayment.
- (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

Interest on any underpayment, deficiency, or delinquency of any tax, fee, or charge administered by the Commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received. Utah Code Ann. §59-1-402(5).

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 Code Ann. §59-1-401(14).

Utah Administrative Rule R861-1A-42(4) provides additional guidance regarding the waiver of penalties or interest for reasonable cause under Utah Code Ann. §59-1-401 as follows in pertinent part:

- (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

Utah Code Ann. §59-1-1417(1) provides that “[i]n a proceeding before the commission, the burden of proof is on the petitioner.” However, this section goes on to provide that the burden of proof is on the Commission to show that a taxpayer “committed fraud with intent to evade a tax, fee, or charge.”

#### CONCLUSIONS OF LAW

1. Utah Code §59-12-103(1)(l) imposes sales and use tax on the purchase price or sales price for amounts paid or charged for tangible personal property if within this state the tangible personal property is: (i) stored; (ii) used; or (iii) consumed. Utah Code §59-12-107(7) governs how the tax is to be

paid on vehicles that are sold other than by a licensed vehicle dealer. Utah Code §59-12-107(7)(a) states, “[o]n 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.” In this matter, the Taxpayer should have paid sales tax on the full purchase price of her vehicle at the time she applied for the title and registered her vehicle. The Taxpayer, however, paid only a fraction of the sales tax that was due at that time, because she claimed the purchase price was a fraction of the actual purchase price.

2. Utah Code Ann. §59-1-401(7)(a)(iv) provides that “[i]f any portion of an underpayment is due to fraud with intent to evade a tax, fee, or charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.”

3. Utah Code Ann. §59-1-1417(1) provides that generally “[i]n a proceeding before the commission, the burden of proof is on the petitioner.” However, this section goes on to provide that the burden of proof is on the Division to show that a taxpayer “committed fraud with intent to evade a tax, fee, or charge.” Accordingly, for a penalty under Utah Code Ann. §59-1-401(7)(a)(iv) for “fraud with intent to evade a tax, fee, or charge,” the Division has the burden of proof.

4. In this matter it is not in dispute that the Taxpayer submitted a Bill of Sale which stated the purchase price of the vehicle was \$\$\$\$\$ and the Vehicle Application for Utah Title stating the purchase price was \$\$\$\$\$. The Taxpayer acknowledged that she knew \$\$\$\$\$ or \$\$\$\$\$ were not the actual purchase price when she signed the document. In fact, from the face of the Bill of Sale, it does appear likely that it was the Taxpayer who had handwritten the purchase price of \$\$\$\$\$, while the rest of the information had been typed in. The question is whether the fraud was committed with intent to evade the sales tax. The Taxpayer has stated that she was not trying to “manipulate anything” and there was “no hope for anything.” As noted by the Division in its prehearing brief, the Utah Supreme Court has provided guidance on how to determine intent in *Jensen v. Utah State Tax Commission*, 835 P.2d 965 (Utah 1992). In *Jensen* the Court held, “because direct evidence of a taxpayer's intent is often nonexistent, specific intent must be drawn from the surrounding facts, considering reasonable inferences drawn therefrom.” *Id.* at 973. The Utah Supreme Court in *Jensen* then explained specific facts that could show intent, citing to the United States Supreme Court's decision in *Spies v. United States*, 317 U.S. 492 (1943). In *Spies* at 499, the Court had stated:

By way of illustration, and not by way of limitation, we would think affirmative willful attempt may be inferred from conduct such as keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind, and any conduct, the likely effect of which would be to mislead or to conceal.

5. Based on the test set out in *Jensen*, the Taxpayer did submit a Bill of Sale, which she had signed and contained the incorrect purchase price. She testified that she knew that \$\$\$\$ was not the purchase price. In addition, she had signed the Vehicle Application for Utah Title, stating that the purchase price was \$\$\$\$ under a declaration that stated “all of the above information is accurate and true.” Submitting the false statement on the Bill of Sale and signing a document stating \$\$\$\$ as the purchase price, when she knew that was not the price, is making a false entry that resulted in her paying significantly less sales and use tax than the amount she actually owed. The information presented, taken as a whole, supports the Division’s position that the Taxpayer’s actions were fraud with intent to evade the tax, which supports the imposition of the fraud penalty.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Jennifer N. Fresques  
Commissioner

**Notice of Appeal Rights and 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.** If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.