

APPEAL #: 22-78
TAX TYPE: SALES AND USE TAX
TAX YEAR: 2018-2021
DATE SIGNED: 8/9/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>BUSINESS TAXES AND DISCOVERY DIVISION OF THE UTAH STATE TAX COMMISSION,¹</p> <p style="padding-left: 40px;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 22-78</p> <p>Account No: #####</p> <p>Tax Type: Audit - Sales & Use Tax</p> <p>Tax Years: 2018, 2019, 2020, & 2021</p> <p>Judge: Halverson</p>
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Presiding:

Shannon Halverson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Taxpayer's Representative
PETITIONER'S REP-2, Taxpayer's Representative
PETITIONER'S REP-3, Taxpayer's Representative

For Respondent: RESPONDENT'S REP-1, Assistant Attorney General
RESPONDENT'S REP-2, Assistant Attorney General
RESPONDENT'S REP-3, Manager, Business Taxes and Discovery

Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on March 1, 2023 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner ("Taxpayer") filed an appeal of a sales and use tax audit deficiency, penalties, and interest for the audit period of DATE through DATE. The Respondent ("Division") issued a Statutory Notice - Sales and Use Tax ("Statutory Notice") audit report on December 20, 2021. The Statutory Notice audit report

¹ 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.

determined a sales and use tax audit deficiency on the Taxpayer's disallowed exempt sales, unreported consumable expense purchases for which tax was not paid, and unreported fixed asset purchases for which tax was not paid during the audit period, interest, and a penalty calculated as 10% of the underpayment of the tax.

The amount of the deficiency with the sales and use tax, penalties, and interest calculated to January 19, 2022 is as follows:

	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u> ²	<u>Total</u>
Sales and Use Tax	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

APPLICABLE LAW

Sales tax is imposed under Utah Code Ann. §59-12-103(1)³ on the following:

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

- (a) retail sales of tangible personal property made within the state;

...

Utah Code Ann. §59-12-102⁴ defines "manufacturing facility" and "tangible personal property" as follows:

...

(65) "Manufacturing facility" means:

- (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;
- (b) a scrap recycler if:
 - (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:
 - (A) iron;
 - (B) steel;
 - (C) nonferrous metal;
 - (D) paper;
 - (E) glass;
 - (F) plastic;
 - (G) textile; or

² Pursuant to Utah Code Ann. §59-1-402, interest continues to accrue on any unpaid balance.

³ The Commission notes that this decision cites the 2018 version of the Utah Code because the audit report finds audit deficiencies beginning on January 1, 2018. The provisions cited did not change substantively during the audit period unless specifically noted.

⁴ The Commission notes that the Utah Legislature amended Utah Code Ann. §59-12-102 several times during and subsequent to the audit period. Although the numbering may have shifted between the audit years and the subsequent years not at issue in this appeal, the provisions cited did not change substantively during the audit period unless specifically noted.

- (H) rubber; and
- (ii) the new products under Subsection (65)(b)(i) would otherwise be made with nonrecycled materials; or
- (c) a cogeneration facility as defined in Section 54-2-1 if the cogeneration facility is placed in service on or after May 1, 2006.

...

(125)(a) Except as provided in Subsection (125)(d) or (e), "tangible personal property" means personal property that:

- (i) may be:
 - (A) seen;
 - (B) weighed;
 - (C) measured;
 - (D) felt; or
 - (E) touched; or
- (ii) is in any manner perceptible to the senses.

...

Use tax is imposed under Utah Code Ann. §59-12-103(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:

...

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

- (i) stored;
- (ii) used; or
- (iii) consumed; and

...

Utah Code Ann. §59-12-104(14)(a) in effect for the January 1, 2018 through December 31, 2018 portion of the audit period provides for an exemption from sales and use tax for certain purchase or lease transactions as follows, in pertinent part:

(14) amounts paid or charged for a purchase or lease of machinery, equipment, or normal operating repair or replacement parts with an economic life of three or more years by:

- (a) a manufacturing facility, except as provided in Subsection (86), that:
 - (i) is located in the state; and
 - (ii) uses the machinery, equipment, or normal operating repair or replacement parts:
 - (A) in the manufacturing process to manufacture an item sold as tangible personal property, as the commission may define that phrase in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
 - (B) for a scrap recycler, to process an item sold as tangible personal property, as the commission may define that phrase in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

Utah Code Ann. §59-12-104(14)(a) in effect for the January 1, 2019 through December 31, 2021 portion of the audit period provides for an exemption from sales and use tax for certain purchase or lease transactions as follows, in pertinent part:

(14) amounts paid or charged for a purchase or lease of machinery, equipment, normal operating repair or replacement parts, or materials, except for office equipment or office supplies, by:

(a) a manufacturing facility that:

(i) is located in the state; and

(ii) uses or consumes the machinery, equipment, normal operating repair or replacement parts, or materials:

(A) in the manufacturing process to manufacture an item sold as tangible personal property, as the commission may define that phrase in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(B) for a scrap recycler, to process an item sold as tangible personal property, as the commission may define that phrase in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

Utah Administrative Rule R865-19S-85 provides additional clarification regarding the exemption from sales and use tax for certain purchases by a manufacturing facility:

(1) Definitions:

(a) "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

(b) "Machinery, equipment, parts, and materials" means:

(i) electronic or mechanical devices or other items incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

(ii) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(A) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(B) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

(c) "Manufacturer" means a person who functions within a manufacturing facility.

(2) The sales and use tax exemption for the purchase or lease of machinery, equipment, parts, and materials by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.

(a) The exemption does not apply to purchases of items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

- (b) Purchases of qualifying machinery, equipment, parts, and materials are treated as purchases of tangible personal property under Section R865-19S-58, even if the item is affixed to real property upon installation.
- (3) Machinery, equipment, parts, and materials used for a nonmanufacturing activity qualify for the exemption if the machinery, equipment, parts, and materials are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:
 - (a) research and development;
 - (b) refrigerated or other storage of raw materials, component parts, or finished product; or
 - (c) shipment of the finished product.
- (4) Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery, equipment, parts, and materials purchased for use in the manufacturing operation are eligible for the sales and use tax exemption if the manufacturing operation constitutes a separate and distinct manufacturing establishment.
 - (a) Each activity is treated as a separate and distinct establishment if:
 - (i) no single SIC code includes those activities combined; or
 - (ii) each activity comprises a separate legal entity.
 - (b) Machinery, equipment, parts, and materials used in both manufacturing activities and nonmanufacturing activities qualify for the exemption only if the machinery, equipment, parts, and materials are primarily used in manufacturing activities.
- (5) The manufacturer shall retain records to support the claim that the machinery, equipment, parts, and materials are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

The Commission has promulgated Administrative Rule R865-19S-60 to provide guidance concerning the sales of machinery, fixtures, and supplies to manufacturers, as follows:

- A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.
- B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.
- C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.
 - 1. Trade fixtures are items of tangible personal property even if the fixtures are temporarily attached to real property used for the benefit of the business conducted on the property.
 - 2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.
 - 3. Examples of trade fixtures include cases, shelves, and racks used to store or display merchandise.
- D. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

Administrative Rule R865-21U-6 provides additional guidance on the liability of purchasers for the payment of tax, as follows:

- (1) For purposes of this section:
 - (a) "Income tax return" means a tax return filed under:
 - (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
 - (ii) Title 59, Chapter 10, Individual Income Tax Act, except for Title 59, Chapter 10, Part 4.
 - (b) "Sales tax license" means a license issued under Title 59, Chapter 12, Sales and Use Tax Act.
- (2) A purchaser of an item that is subject to sales and use tax must account for the tax liability by paying the tax:
 - (a) to the seller from whom the item was purchased if the seller has a sales tax license; or
 - (b) directly to the commission if the seller from whom the item was purchased does not collect the sales tax from the purchaser.
- (3) A purchaser that is subject to Subsection (2)(b) shall:
 - (a) if the purchaser has a sales tax license pay the tax on the purchaser's sales and use tax return; or
 - (b) if the purchaser does not have a sales tax license, pay the tax on the purchaser's income tax return.
- (4)
 - (a) A purchaser paying the tax to the commission under Subsection (3)(b) shall compute the tax using the rates provided in the income tax instructions for the address of the purchaser as shown on the income tax return.
 - (b) If a purchaser is not required to file an income tax return, the purchaser shall:
 - (i) report and pay the tax on the income tax return the purchaser would otherwise be required to file; and
 - (ii) include with the return a statement stating that no income tax is due and that the return is submitted for payment of use tax only.

Penalties are assessed under Utah Code Ann. §59-1-401(7) as follows:

- (7)(a) Additional penalties for an underpayment of a tax, fee, or charge are as provided in this Subsection (7)(a).
 - (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.

Interest is assessed in accordance with Utah Code Ann. §59-1-402, below, in pertinent part:

- (6) Interest on any underpayment, deficiency, or delinquency of a tax, fee, or charge shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §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."

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

- (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.
- (3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
 - (a) Timely Mailing...
 - (b) Wrong Filing Place...
 - (c) Death or Serious Illness...
 - (d) Unavoidable Absence...
 - (e) Disaster Relief...
 - (f) Reliance on Erroneous Tax Commission Information...
 - (g) Tax Commission Office Visit...
 - (h) Unobtainable Records...
 - (i) Reliance on Competent Tax Advisor . . .
 - (j) First Time Filer . . .
 - (k) Bank Error...
 - (l) Compliance History:
 - (i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.
 - (ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.
 - (m) Employee Embezzlement...
 - (n) Recent Tax Law Change...
- (4) Other Considerations for Determining Reasonable Cause.
 - (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
 - (i) Whether the commission had to take legal means to collect the taxes;
 - (ii) If the error is caught and corrected by the taxpayer;
 - (iii) The length of time between the event cited and the filing date;
 - (iv) Typographical or other written errors; and
 - (v) Other factors the commission deems appropriate.
 - (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
 - (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for a waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.
 - (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

Utah Code Ann. §59-1-1417 provides, "in a proceeding before the commission, the burden of proof is on the petitioner..."

Utah Code Ann. §59-1-1417(2) requires the Commission to construe a statute imposing a sales and use tax on a purchase or exempting a purchase from sales and use tax as follows:

- (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 Division issued a Statutory Notice - Sales and Use Tax audit report to the Taxpayer for the audit period of DATE through DATE (“audit period”) on December 20, 2021. The audit report included Schedule 1, which was a schedule of the disallowed exempt sales exceptions and identified transactions that were listed as exempt sales for which valid exemption documentation was not provided. The audit report included Schedule 2, which was a schedule of the unreported expense purchases and identified transactions that were consumable purchases on which use tax was not paid for the period of DATE through DATE. The audit report included Schedule 3, which was a schedule of unreported expense purchases which were determined based on a projection factor for the period from DATE through DATE. The audit report included Schedule 4, which was a schedule of credits for sales tax paid to sellers in error and provided a credit for sales tax paid to sellers on items that were determined to be nontaxable. The audit report included Schedule 5, which was a schedule of unreported fixed asset purchases and identified fixed asset purchases for which tax was not paid. The amount of tax assessed for each schedule was as follows:

REDACTED TABLE

The audit report assessed a negligence penalty that was calculated as 10% of the underpayment of the sales and use tax and totaled \$\$\$\$\$. The report stated that a negligence penalty was assessed for the following reasons:

The adjustments in this audit are for the same types of errors as the previous audit dated DATE, and the amounts are significant. Reasonable controls to ensure proper collection and/or accrual of the taxes and fees have not been instituted.

The Taxpayer’s representatives stated at the Initial Hearing that the Taxpayer is a printing manufacturer that prints booklet papers, boxes, cartons, and other items that fit in that category. They indicated that the Taxpayer also recycles the paper scraps from the products that are produced. They acknowledged that the percentage of revenue that they receive from the recycling of the paper as compared to the rest of work that the Taxpayer is engaged in is minimal. The Taxpayer’s representatives submitted a copy of the Taxpayer’s profit and loss statement for the

period from January through December of 2020. The Taxpayer's profit and loss statement indicated that the Taxpayer had \$\$\$\$\$ of income from sales, \$\$\$\$\$ of income from printing services, \$\$\$\$\$ of income from plate and paper recycling, \$\$\$\$\$ of income from reimbursed expenses, \$\$\$\$\$ of income from shipping and handling, and a discount expense of \$\$\$\$\$.

The Taxpayer's representatives stated that they are not contesting the audit assessment of sales and use tax on the disallowed exempt sales in Schedule 1, the unreported consumable expense purchases in Schedule 2, the unreported consumable expense purchases in Schedule 3, or the credit for sales tax paid to sellers in error in Schedule 4. However, they indicated that they are contesting the deficiency of sales and use tax assessed on the unreported asset purchases identified in Schedule 5 and the penalty amounts assessed in the audit report.

The Taxpayer's representatives stated that they feel the assets identified in Schedule 5 are used in the manufacturing process and are, therefore, exempt from sales and use tax. They stated that they are disputing all of the unreported asset purchases in Schedule 5 except for the purchase of the shed for the compressor that was purchased on DATE for \$\$\$\$\$ that was assessed a tax deficiency of \$\$\$\$\$ and the lift that was purchased through an auction sale on DATE for \$\$\$\$\$ that was assessed a tax deficiency of \$\$\$\$\$. Additionally, the Division's representatives stated at the Initial Hearing that, after listening to the Taxpayer's presentation, the Division agrees to remove the pallets and the forklifts from Schedule 5 of the audit report because they no longer believe those items are taxable. The Division identified the following transactions as the transactions the Division is agreeing are exempt: the purchase of the EQUIPMENT-1 from BUSINESS-1 on DATE for \$\$\$\$\$ that was assessed a tax deficiency of \$\$\$\$\$; the purchase of the pallets from BUSINESS-2 on DATE for \$\$\$\$\$ that was assessed a tax deficiency of \$\$\$\$\$; and the purchase of the EQUIPMENT-2 from BUSINESS-3 on DATE for \$\$\$\$\$ that was assessed a tax deficiency of \$\$\$\$\$. The tax amount owing from the three items that the Division agreed were exempt was \$\$\$\$\$.

The following transactions are the unreported asset purchases on Schedule 5 of the audit report that were in dispute at the Initial Hearing:

REDACTED TABLE

The Taxpayer's representatives stated that the baler is a machine that takes all the scrap paper from the manufacturing process and sends it to a machine that compacts the scraps so that they can be sold to recycling companies. They indicated that this process is a method of keeping the finished product clean but also selling the product separately. The Taxpayer's representatives submitted a shipping statement for the Taxpayer from BUSINESS-4 for the period from DATE to DATE and another shipping statement for the Taxpayer from BUSINESS-4 for the period from

DATE to DATE. The Taxpayer's representatives argued that there is a market for the recycled scrap paper and noted on the shipping statements that they are paid more for the recycler's purchase of the scrap paper when it is baled.

The Taxpayer's representatives stated that the baler is also used in the manufacturing process in addition to the recycling process. They indicated that the baler keeps the ordinary product clean and aggregates the scraps into bundles for sale. They indicated that there is dust and left over paper that is created from the manufacturing process. They stated that there is tubing that connects the baler to the die cut machine. They indicated that there are compressors and air flow that are always suctioning paper and dust into the baling machine, and the baling machine compresses all the paper and makes a bale of paper by compressing the scraps. They stated that the scraps can be sold loose for a smaller margin. They stated that, besides aggregating the paper, the vacuum and baler also prevents dust from flying back into the manufactured final product. They argued that the baled scraps of paper are sold to a recycling company and the scrap product that is baled is sold to the recycling company at a higher price. They stated that they have to remove the material that is not being used, otherwise the scrap material would pile up and interfere with the manufacturing equipment operations. They stated that the vacuum and baler are tied and hooked onto the machine and are removing the paper out of the back.

The Taxpayer's representatives indicated that the computer software program is used to make the dies, which are used in the die cutting machine. They indicated that the Taxpayer receives a program design (a shape from the client), and the software makes the die. The die is then rubbered and mounted into the die cutting machine. They indicated that the software is used to make the die ready for the machine and is used in the die cutting contract. They indicated that the purchase order for a printing contract bills the die as a separate line item. They indicated that the Taxpayer does have to have the die that the software program creates and the machine will not work without the software. They stated that they cannot make the die that does the cutting without the software and they would be out of business without it. They stated that the Taxpayer's clients own the die and they are stored by the Taxpayer. They indicated that if a client requests the die, then the client is likely going to another printing manufacturer to have them perform the work. They indicated that the client will sometimes supply their own die from another printer, and the Taxpayer does not make a die on every job.

The Taxpayer's representatives stated that in Utah Administrative Rule R865-19S-85(1)(b)(i), the definition of machinery and equipment includes electronic or mechanical devices incorporated in the manufacturing process, including final processing, finishing and packaging of articles sold as tangible personal property. They noted that the

definition of machinery and equipment in Utah Administrative Rule R865-19S-85(1)(b)(ii) includes any accessory essential to the manufacturing process. They also noted that Utah Administrative Rule R865-19S-85(3) states that “[m]achinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities.” They argued that all of the items on the list, including the pallet racking and the computer software, are used in manufacturing activities. They indicated that the Cimex software is a computer program that makes the die used in the manufacturing process and indicated that this software is what is used in the cutting machines that cut the die. They indicated that the label software is software that is related to the operations in the folding carton section. The Taxpayer’s representatives stated that the only items they are conceding are the shed for the compressor and the scissor lift. They stated that all the other items included in Schedule 5 are used in the manufacturing process. They argued that all of those items are essential for the business.

The Division’s representatives stated that the Division’s position on the baling equipment is that the Division still believes that the baling equipment has a significant role that is not part of the manufacturing process. They argued that paper recycling is not the sale of tangible personal property. They asserted that it is a method of getting rid of the paper scraps. They argued that the percentage of income from recycling is a de minimis amount of revenue. They argued that the paper recycling does not qualify on its own as a separate manufacturing process. They acknowledged that the manufacturing exemption authorized in Utah Code Ann. §59-12-104 has a provision exempting a scrap recycler but argued that the Taxpayer does not meet the statutory requirements of that provision. They argued that the baler vacuum, the baler ducting, and the baler are items that control the environment around the machines but are separate and are not tied to the continuous manufacturing process. They acknowledged that the Taxpayer’s representatives stated that the baler vacuum, baler ducting, and baler keep the dust and paper products from getting contaminated but stated that they do not believe that they are part of the continuous manufacturing process.

The Division’s representative argued that the two software packages, based on his understanding, are programmed to set the die so that paper can be cut to a specific size. They argued that the software programs are being used before the manufacturing process begins.

The Division’s representatives stated that Utah Code Ann. §59-12-103 imposes a sales and use tax on sales of tangible personal property. They stated that the Taxpayer is not disputing that transactions on their own are sales or purchases of items of tangible personal property but stated that the Taxpayer’s representatives are claiming that the purchases are exempt from sales

and use tax under Utah Code Ann. §59-12-104(14). They stated that the Taxpayer claimed the manufacturing exemption on the purchase of the baling equipment and computer software.

The Division's representatives stated that the manufacturing exemption is authorized in Utah Code Ann. §59-12-104(14) and noted that the law changed during the audit period, effective on January 1, 2019. They noted that a portion of the unreported asset purchases included in Schedule 5 occurred in 2018 and other purchases occurred in 2019, 2020, and 2021. They stated that, for the purchases made in 2018, the manufacturing exemption exempts the amounts paid or charged for a purchase or lease of machinery, equipment, or normal operating repair or replacement parts with an economic life of three or more years that are used in the manufacturing process to manufacture items sold as tangible personal property.

The Division's representatives stated that the Commission has promulgated Utah Administrative Rule R865-19S-85 to further clarify the manufacturing exemption. They noted that Utah Administrative Rule R865-19S-85(1)(b) defines machinery and equipment as electronic or mechanical devices incorporated into the manufacturing process from the initial state to final processing. They noted that the definition includes automated handling devices and any accessory that is essential. They noted that Utah Administrative Rule R865-19S-85(2) provides that the sales and use tax exemption applies only to purchases or leases of tangible personal property that are used in the actual manufacturing process.

The Division's representatives stated that the law was changed for purchases made on or after January 1, 2019. They stated that materials were added to the exemption for machinery equipment and the language authorizing the exemption was modified to expand the exemption for parts and to include materials. They noted that the provision requiring that the machinery, equipment, or normal operating repair or replacement parts have an economic life of three or more years to be eligible for the exemption was removed. They stated that the machinery parts and materials must still be used in the actual manufacturing process. They stated that, pursuant to Utah Administrative Rule R865-19S-85(5), a manufacturer is required to retain records to support the claim that a transaction is exempt from sales and use tax.

The Division's representatives stated that a negligence penalty was assessed in the audit report in accordance with Utah Code Ann. §59-1-407(1), which was calculated as 10% of the portion of the underpayment based on the Taxpayer's failure to keep records to support the claimed exemptions. They indicated that the Taxpayer committed the same errors in a previous audit conducted by the Division. The Division's representatives also stated that pursuant to Utah Code Ann. §59-1-402, interest accrues on any underpayment of tax and is computed from the time the original return is due until payment is received.

The Division's representatives stated that, in accordance with Utah Code Ann. §59-1-1417(1), the burden of proof is on the petitioner in this appeal. They also noted that Utah Code Ann. §59-1-1417(2)(b) requires that a statute providing an exemption shall be construed strictly against the taxpayer. They argued that any doubt about the proper application of a sales tax exemption must be resolved against the taxpayer and cited *Dick Simon Trucking, Inc., v. Utah State Tax Comm'n*, 84 P.3d 1197 (Utah 2004) to support that assertion.

The Division's representatives stated that Utah Code Ann. §59-12-106(3)(a) provides that “[f]or the purpose of the proper administration of this chapter and to prevent evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for delivery in this state is sold for storage, use, or other consumption in this state unless the person selling the property, item, or service has taken from the purchaser an exemption certificate” They noted that the importance of the exemption certificate was affirmed in *Tummurru Trades v. Utah State Tax Comm'n*, 802 P.2d 715 (Utah 1990). In that case, the Utah Supreme Court held that the purpose of the statutory requirement to keep records is to prevent evasion and fraud and found that the taxpayer in that case could not provide the exemption certificates. The Court found that the taxpayer failed to keep adequate records and held that oral testimony is not an adequate substitute for accurate record keeping.

The Division's representatives stated that Utah Code Ann. §59-12-103 creates a presumption that sales are taxable and not exempt. They stated that, when considering whether the baler qualifies as a scrap recycler under Utah Code Ann. §59-12-104(14)(a)(ii)(b), the issue is whether the Taxpayer is processing an item that is sold as tangible personal property. They stated that the Division's position is that it is not a recyclable sale. They argued that the Taxpayer is only finding a way to monetize their scrap and the baler equipment is merely aggregating the waste into a form that is more valuable to sell. They argued that the baler only makes the scrap paper more valuable and does not change the nature of the product in the processing. They cited *Initial Hearing Order, Appeal No. 10-2057*, Utah State Tax Commission (October 7, 2011) to support that assertion and noted that the Commission found that manufacturing requires the mechanical or chemical transformation of tangible personal property. They also cited *East Texas Motor Freight Lines, Inc. v. Frozen Food Express*, 351 U.S. 49 (1956) and *Hartranft v. Wiegmann*, 121 U.S. 609 (1887) to support that assertion, which were two older United States Supreme Court cases where the products were not considered manufactured.

The Division's representatives noted that the Taxpayer has not disputed Schedules 1, 2, & 3, or the credits provided in Schedule 4 for purchases made where taxes should not have been

paid that were actually tax exempt or not taxable and the primary issue in this appeal is the dispute between the parties regarding whether certain unreported asset purchases identified in Schedule 5 are exempt.

The Division's representatives concluded by arguing that the scrap paper is similar to the defeathering of a chicken, where the removal of the feathers is waste that is created as part of the manufacturing process but is not part of the manufacturing process that is the creation of the final product. They argued that the scrap paper is waste that is created as part of the manufacturing process even though it has been monetized and acknowledged that the Taxpayer is making money off of the bundled product. However, they argued that the creation of the waste is a byproduct of the manufacturing process and is not part of the manufacturing process.

The Division's representatives stated that the Division's position on the software is that the Division does not have the authority to remove the software purchases from the unreported asset purchases on Schedule 5. They stated that they are asking the Commission to make a decision on those transactions. They argued that the software is not part of the manufacturing process and only provides the environment in which the processing can occur. They argued that it is part of the design process and not part of the manufacturing process itself. They argued that it is not part of the mechanical manipulation of the boxes being stamped. They argued that the Taxpayer carries the burden of proof in this appeal to demonstrate the applicability of the exemption. They asserted that the Taxpayer has not shown that the baler and the software constitute machinery and equipment that is part of the manufacturing process. They acknowledged that those items generate profit for the Taxpayer but are not part of the manufacturing process. They cited Utah Administrative Rule R865-19S-85(2) which states "[t]he sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process." The Division's representatives argued that the Taxpayer is not considered a scrap recycler because they are aggregating waste but they are not transforming it. They stated that the Taxpayer is merely bundling the material and that alone does not qualify for the exemption.

The Taxpayer's representatives concluded by arguing that they are doing business and selling the die as a service to the clients. They indicated that it is a service that the Taxpayer used to contract out, but the Taxpayer brought the service into the company as the business expanded. They stated that the dies are billed as a separate line item of tangible personal property. They indicated that the dies are items that can be transferred back to the client to take to another printing manufacturer. They indicated that they can provide invoices where they are charging the

dies as a separate line item and stated that they have to have software to create the dies that they sell.

The Taxpayer's representatives argued that the manufacturing machine would not work if the scraps were not removed. They stated that the Taxpayer's business is stamping and their increased productivity requires the removal of scrap. They argued that the manufacturing machines cannot run if the scrap is not immediately removed and the machine cannot function. They also argued that the vacuum and the baler are dealing with the dust collection in the manufacturing process and are removing objects that would contaminate the product. They argued that the vacuum and baler are also producing a product that is purchased by a recycling company. They argued that they are making something that is more valuable and asked that the Commission consider those arguments in making a determination.

Commission Findings & Analysis

The burden of proof is generally on the Taxpayer, in accordance with Utah Code Ann. §59-1-1417. Furthermore, as the Taxpayer is seeking an exemption from tax, the Commission must construe the statute strictly against the Taxpayer in accordance with Subsection (2) of Utah Code Ann. §59-1-1417. Utah Code Ann. §59-12-103 imposes tax on amounts paid or charged for certain transactions. Among those transactions are retail sales of tangible personal property and amounts paid or charged for the lease or rental of tangible personal property if within the state the tangible personal property is stored, used, or otherwise consumed. Certain transactions are exempt from taxation, as provided in Utah Code Ann. §59-12-104.

The parties did not dispute that the items listed in Schedule 5 were items of tangible personal property purchased by the Taxpayer that were stored, used, or consumed within the state. However, the Taxpayer's representatives asserted that all of the transactions listed in Schedule 5 of the Division's audit report were purchases of machinery, equipment, or materials used in the manufacturing process that were exempt from sales and use tax under Utah Code Ann. 59-12-104(14), excluding the two purchases that the Taxpayer is not disputing on Schedule 5 that were identified above.

Taxpayer's Disputed Schedule 5 Unreported Asset Purchases made in 2018

Utah Code Ann. §59-12-104(14) in effect for the 2018 tax year provides that purchases or leases made by a manufacturing facility are exempt from sales and use taxation if a number of requirements are met. First, the buyer or lessor must be a manufacturing facility in this state. Second, the transaction must involve the sale or lease of machinery, equipment, or normal operating repair or replacement parts. Third, the machinery, equipment, or normal operating repair or replacement parts must have an economic life of three or more years. Fourth, the

machinery, equipment, or normal operating repair or replacement parts must be used in the manufacturing process to manufacture an item sold as tangible personal property or by a scrap recycler to process an item sold as tangible personal property.

“Manufacturing facility” is defined in Utah Code Ann. §59-12-102(65), as, “[a]n establishment described in: (i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or (ii) a NAICS code within NAICS Sector 31-33, Manufacturing, of the 2017 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget...” There was no dispute between the parties that the Taxpayer was a “manufacturing facility” during the audit period.

The following nine transactions are the unreported asset purchases that occurred in 2018 that are in dispute:

REDACTED TABLE

I. Baling Machinery and Equipment

Six of the transactions listed above are purchases that include balers, baler vacuums, and baler ducting. There is no dispute that the Taxpayer’s purchases of the balers, baler vacuums, and baler ducting are machinery, equipment, or normal operating repair or replacement parts, which satisfies the second requirement to qualify for the manufacturing exemption. However, the Taxpayer has not provided any evidence or proffered any testimony to show that the items have an economic life of three or more years. Thus, the Taxpayer has failed to satisfy the third requirement to qualify for the manufacturing exemption.

The machinery, equipment, or normal operating repair or replacement parts must be used in the manufacturing process to manufacture an item sold as tangible personal property or used by a scrap recycler to process an item sold as tangible personal property. The Taxpayer’s representatives asserted that the balers, baler vacuums, and baler ducting all function to remove the scrap paper from the manufacturing process and stated that there is tubing that connects the baler to the die cut machine. They indicated that there are compressors and air flow that are always suctioning paper and dust into the baling machine. They stated that the baling machine compresses all the paper and makes a bale of paper by compressing the scraps. They indicated that this process is a method of keeping the finished product clean but also selling the byproduct separately. However, the Division asserted that the scrap paper is waste that is created as part of the manufacturing process and is a byproduct of the manufacturing process and is not part of the manufacturing process. Furthermore, the Division’s representatives asserted that the sale of the

compressed and bundled scrap paper does not qualify as a sale by a scrap recycler because it is not a sale of recycled tangible personal property. They argued that the Taxpayer is only finding a way to monetize their scrap and the baler equipment is merely aggregating the waste into a form that is more valuable to sell. They argued that the baler only makes the scrap paper more valuable and does not change the nature of the product in the processing.

The Legislature has exempted only those items of machinery and equipment that are used in the manufacturing process to manufacture an item sold as tangible personal property or used by a scrap recycler to process an item sold as tangible personal property. The Commission has promulgated Utah Administrative Rule R865-19S-85 to provide additional guidance on the sales and use tax exemption for certain purchases by a manufacturing facility. Utah Administrative Rule R865-19S-85(2) provides that “[t]he sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.” Furthermore, Utah Administrative Rule R865-19S-85(3) provides that “[m]achinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities.” Although the Taxpayer indicated that the baler equipment was connected to machinery used in the Taxpayer’s manufacturing process and was therefore used in manufacturing activities and also asserted that the baler equipment was used for scrap recycling, the Taxpayer provided no photographic or other documentary evidence to verify the operation and use of the baler equipment. The Commission notes that Utah Administrative Rule R865-19S-85(5) requires a manufacturer to “retain records to support the claim that the machinery, equipment, parts, and materials are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.” Thus, the Commission finds that the Taxpayer has not provided sufficient evidence to demonstrate that the machinery or equipment satisfies the fourth requirement to qualify for the manufacturing exemption.

The Taxpayer has not met its burden of proof in this matter. The Taxpayer has not provided sufficient evidence to show that the baler equipment has an economic life of three or more years or that the baler equipment is used in the actual manufacturing process or used by a scrap recycler to process an item sold as tangible personal property. Thus, the Commission finds that the Division’s audit deficiency of sales and use tax on those transactions should be sustained.

II. Other Machinery and Equipment

Three of the transactions are shredder costs. The Taxpayer provided no explanations, photographs, or documentation regarding the shredder costs. As noted above, in accordance with Utah Code Ann. §59-1-1417(1), the burden of proof is on the Taxpayer in this appeal. The

Commission finds that the testimony and submissions provided by the Taxpayer's representatives did not meet the burden of proof and are not sufficient to demonstrate that the shredder costs meet all of the requirements to qualify as exempt from sales and use tax. The Taxpayer has failed to show that the shredder costs are purchases of machinery, equipment, or normal operating repair or replacement parts, that the machinery and equipment have an economic life of three or more years, or that they are machinery and equipment that are used in the actual manufacturing process to manufacture an item sold as tangible personal property or are used by a scrap recycler to process an item sold as tangible personal property. The Taxpayer has also failed to show that any other exemption applies to these transactions. Thus, the Commission finds that the Division's audit deficiency of sales and use tax on those transactions should be sustained.

Taxpayer's Schedule 5 Unreported Asset Purchases made in 2019, 2020, and 2021

Utah Code Ann. §59-12-104(14) in effect for the 2019, 2020, and 2021 tax years at issue in this appeal provides that purchases or leases made by a manufacturing facility are exempt from sales and use taxation if a number of requirements are met. First, the buyer or lessor must be a manufacturing facility in this state. Second, the transaction must involve the sale or lease of machinery, equipment, normal operating repair or replacement parts, or materials, except for office equipment or office supplies. Third, the machinery, equipment, or normal operating repair or replacement parts must be used or consumed in the manufacturing process to manufacture an item sold as tangible personal property or used by a scrap recycler to process an item sold as tangible personal property.

The following are the 13 disputed unreported asset purchases in Schedule 5 that occurred in 2019, 2020, and 2021:

REDACTED TABLE

I. *Baling Machinery and Equipment*

Three of the transactions are purchases of machinery or equipment that include a baler, a Nexgen baler, and a 100 hp fan for the baler. There is no dispute that the Taxpayer's purchases of the balers and the fan for the baler are machinery, equipment, normal operating repair or replacement parts, or materials, which satisfies the second requirement to qualify for the manufacturing exemption.

The Taxpayer's representatives' arguments and the Division's representatives' arguments were the same arguments made for the baler equipment purchased in 2018. The Legislature has

exempted only those items of machinery and equipment that are used in the manufacturing process to manufacture an item sold as tangible personal property or are used by a scrap recycler to process an item sold as tangible personal property. The Commission has promulgated Utah Administrative Rule R865-19S-85 to provide additional guidance on the sales and use tax exemption for certain purchases by a manufacturing facility. Utah Administrative Rule R865-19S-85(2) provides that “[t]he sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.” Furthermore, Utah Administrative Rule R865-19S-85(3) provides that “[m]achinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities.” Although the Taxpayer indicated that the baler equipment was connected to machinery used in the Taxpayer’s manufacturing process and was therefore used in manufacturing activities and also asserted that the baler equipment was used for scrap recycling, the Taxpayer provided no photographs or other documentary evidence to verify the operation and use of the baler equipment. The Commission notes that Utah Administrative Rule R865-19S-85(5) requires a manufacturer to “retain records to support the claim that the machinery, equipment, parts, and materials are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.” Thus, the Commission finds that the Taxpayer has not provided sufficient evidence to demonstrate that the baler equipment is used in the actual manufacturing process or is used for a scrap recycler, to process an item sold as tangible personal property and, therefore, has not satisfied the third requirement to qualify for the manufacturing exemption.

The Taxpayer has not met its burden of proof in this matter. The Taxpayer has not submitted sufficient evidence to show that the machinery and equipment are used in the actual manufacturing process to manufacture an item sold as tangible personal property or are used by a scrap recycler to process an item sold as tangible personal property. Thus, the Commission finds that the Division’s audit deficiency of sales and use tax on those transactions should be sustained.

II. Computer Software

Four of the transactions are purchases of machinery, equipment, or materials that include a computer program for die room, computer software, and label software. There is no dispute that the Taxpayer’s purchases of the computer software satisfies the second requirement to qualify for the manufacturing exemption.

The Taxpayer’s representatives asserted that the computer software programs purchased from Cimex Corp are used to make the dies, which are used in the die cutting machine. They

indicated that the Taxpayer receives a program design and the software makes the die. The die is then rubbered and mounted into the die cutting machine. They indicated that the software is used to make the die ready for the machine and is used in the die cutting contract. They indicated that the purchase order for a printing contract bills the die as a separate line item. However, the Division asserted that the software is not part of the manufacturing process and only provides the environment in which the processing can occur. They argued that it is part of the design process and not part of the manufacturing process itself. They argued that it is not part of the mechanical manipulation of the boxes being stamped.

The Legislature has exempted only those items of machinery and equipment that are “used in the manufacturing process to manufacture an item sold as tangible personal property.” The Commission has promulgated Utah Administrative Rule R865-19S-85 to provide additional guidance on the sales and use tax exemption for certain purchases by a manufacturing facility. Utah Administrative Rule R865-19S-85(2) provides that “[t]he sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.” Furthermore, Utah Administrative Rule R865-19S-85(3) provides that “[m]achinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities.” The Taxpayer indicated that the two Cimex computer software programs were used to make the dies, which are used in the die cutting machine in the Taxpayer’s manufacturing process and were therefore used in manufacturing activities. . The Commission finds that the Taxpayer has provided sufficient testimony to demonstrate that the computer software used to make the dies is used in a manufacturing activity and, therefore, has satisfied the third requirement to qualify for the manufacturing exemption. Thus, the Commission finds that the following two purchases of the Cimex Software qualify for the manufacturing exemption: the purchase of the Cimex Software on DATE in the amount of \$\$\$\$ that was assessed a tax deficiency of \$\$\$\$ and the purchase of the Cimex Software on DATE in the amount of \$\$\$\$ that was assessed a tax deficiency of \$\$\$\$\$. The tax amount owing from the two Cimex computer software purchases was \$\$\$\$\$ and the audit deficiency should be reduced to exclude those transactions.

The Taxpayer indicated that the two Esko label software programs are software that is related to the operations in the folding carton section. The Taxpayer provided no further explanations regarding the operation and use of that software and did not provide any photographs or other documentary evidence to verify the operation and use of that computer software. The Commission notes that Utah Administrative Rule R865-19S-85(5) requires a

manufacturer to “retain records to support the claim that the machinery, equipment, parts, and materials are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.” The Commission finds that the Taxpayer has not provided sufficient testimony or other evidence to demonstrate that the Esko computer software was used in the manufacturing process, and, therefore has not satisfied the third requirement to qualify for the manufacturing exemption. Thus, the Commission finds that the Division’s audit deficiency of sales and use tax on those transactions should be sustained.

III. Other Machinery and Equipment

Six of the transactions are purchases of machinery or equipment that include blowers for the shredder, pallet racking, and pallet wrappers. The Taxpayer’s representatives provided no testimony, documentation, or photographic evidence regarding the functions and uses of those items. As noted above, in accordance with Utah Code Ann. §59-1-1417(1), the burden of proof is on the Taxpayer in this appeal. The Commission finds that the testimony and submissions provided by the Taxpayer’s representatives did not meet the burden of proof and are not sufficient to demonstrate that the blowers for the shredder, pallet racking, and pallet wrappers meet all of the requirements to qualify as exempt from sales and use tax under Utah Code Ann. §59-12-104(14). The Taxpayer has failed to show that the blowers for the shredder, pallet racking, and pallet wrappers are machinery and equipment that are used in the actual manufacturing process to manufacture an item sold as tangible personal property or are used by a scrap recycler to process an item sold as tangible personal property. Thus, the Commission finds that the Division’s audit deficiency of sales and use tax on those transactions should be sustained.

Audit Deficiencies in Schedules 1, 2, and 3 and credit in Schedule 4

Reviewing the information presented, neither party disputed that the Division properly assessed sales and use tax in accordance with Utah Code Ann. §59-12-103(1) on the Taxpayer’s disallowed exempt sales made during the audit period outlined in Schedule 1 and on the unreported expense purchases made during the audit period outlined in Schedules 2 and 3. Additionally, neither party disputed the schedule of credits for sales tax paid to sellers in error in Schedule 4. Thus, the Commission finds that the Division’s audit deficiencies of sales and use tax in Schedules 1, 2, and 3 and the credit provided in Schedule 4 should be sustained.

Assessment of Penalties and Interest

The Division assessed a negligence penalty in accordance with Utah Code Ann. §59-12-107(11) and §59-1-401(7)(a)(i). The Utah Supreme Court held in *Benjamin v. Utah State Tax Comm'n*, that a negligence penalty is appropriate "when the tax-payer has failed to pay taxes and a reasonable investigation into the applicable rules and statutes would have revealed that the

taxes were due.”⁵ The Commission notes that the Taxpayer failed to pay taxes due on unreported taxable expense purchases and unreported asset purchases during the audit period and the Taxpayer had been instructed on the applicable statutes, rules, and methods for compliance through a previous audit. The Commission finds that the Division’s assessment of a negligence penalty is supported for the audit period. Based on the above findings, the Commission finds that the negligence penalty assessed by the Division should be sustained. The Commission finds that the Division properly assessed interest in accordance with Utah Code Ann. §59-12-107(11)(c) and §59-1-402 and the Division’s assessment of interest should be sustained.

However, the Commission has discretion to waive penalties and interest under Utah Code Ann. §59-1-401(14). The Commission has promulgated Utah Administrative Rule R861-1A-42 and Publication 17 to outline the circumstances the Commission may consider as “reasonable cause” justifying a waiver of penalties. The Commission may find reasonable cause to waive penalties based on a taxpayer’s compliance history, as provided in Subsection (3)(l) of Rule 42:

- (i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.
- (ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

In this appeal, the Division submitted information that indicated the Taxpayer had previously been audited regarding the same or similar issues. Thus, the Commission finds there is not reasonable cause to waive the negligence penalty assessed in the audit report based on the Taxpayer’s compliance history. No other grounds for waiving the penalties have been asserted or are applicable in this matter. Furthermore, Utah Administrative Rule R861-1A-42(4)(c) provides that, “[i]n most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for a waiver.” The Commission finds that the Taxpayer’s request for a waiver of the penalties should be denied because the Taxpayer has not demonstrated that there is reasonable cause justifying a waiver of the penalties assessed for the August 1, 2018 through April 30, 2021 audit period.

With regard to the waiver of interest, Rule R861-1A-42 specifically provides, “[g]rounds 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.” Interest is not assessed to punish taxpayers. Instead, interest is assessed to compensate the state for the time value of money. The State of Utah was denied the use of the funds from the time the taxes were originally due. In this appeal,

⁵ *Benjamin v. Utah State Tax Comm'n*, 2011 UT 14, 32, 250 P.3d 39, 47 (Utah 2011)(citing *Hales Sand & Gravel, Inc. v. Audit Div.*, 842 P.2d 887, 895 (Utah 1992)).

the Taxpayer has the burden of proof and has not provided any information to show that the Commission gave it erroneous information or took inappropriate action that contributed to the error. Thus, the Taxpayer has not demonstrated sufficient grounds for the waiver of interest in this appeal.

Shannon Halverson
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's audit deficiency of \$\$\$\$ for Schedule 1, \$\$\$\$ for Schedule 2, \$\$\$\$ for Schedule 3, and (\$\$\$\$) for Schedule 4. The Commission reduces the audit deficiency for Schedule 5 to \$\$. The Commission orders the penalty and interest amounts assessed on the audit be reduced based on the reduced total audit deficiency. 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 ____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
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.