

APPEAL # 24-1247

TAX TYPE: SALES & USE TAX

TAX YEAR: 2020

DATE SIGNED: 07/17/2025

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

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BUSINESS TAXES AND DISCOVERY DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 24-1247 Account No: ##### Tax Type: Audit - Sales & Use Tax Tax Year: 2020 Judge: Nielson-Larios
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Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER
PETITIONER'S REP-1

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on December 10, 2024, on an appeal filed by Petitioner pursuant to Utah Code §59-1-501. The Initial Hearing was conducted in accordance with Utah Code §59-1-502.5. Petitioner is appealing a Statutory Notice of Sales & Use Tax audit deficiency, issued by Respondent ("Division") on DATE, which indicated an audit deficiency of \$\$\$\$\$ in sales and use tax, and \$\$\$\$\$ in interest as of the Notice date.¹ No penalties were assessed with the audit.

¹ Interest continues to accrue on the unpaid balance.

APPLICABLE LAW

Utah imposed sales and use taxes pursuant to Utah Code §59-12-103(1)(2020)² as follows:

(1) A tax is imposed on the purchaser as provided in this part on the purchase price or sales price for amounts paid or charged for the following transactions:

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

....

(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;

....

In situations where the seller does not collect the sales tax, Utah Code 59-12-107(2)(f) requires that the purchaser pay a use tax as follows:

(f) A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if: (i) the seller did not collect a tax imposed by this chapter on the transaction; and (ii) the person: (A) stores the tangible personal property or product transferred electronically in the state; (B) uses the tangible personal property or product transferred electronically in the state; or (C) consumes the tangible personal property or product transferred electronically in the state.

Utah Code §59-12-107(7) sets out how a sales or use tax is to be paid when a vehicle sale is made by other than a licensed vehicle dealer 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.

For purposes of Utah Code §59-12-107(7), “vehicle” is defined at Utah Code §59-12-102(142) to be:

(a) Subject to Subsection (142)(b), "vehicle" means the following that are required to be titled, registered, or titled and registered: (i) an aircraft as defined in Section 72-10-102; (ii) a vehicle as defined in Section 41-1a-102; (iii) an off-highway vehicle as defined in Section 41-22-2; or (iv) a vessel as defined in Section 41-1a-102.

Utah Code §72-10-109 establishes the requirement that an aircraft must have a certificate of registration in order to be operated in this state as follows:

² This decision cites the substantive statutory provisions in effect as of January 1, 2020.

(1)(a) A person may not operate, pilot, or navigate, or cause or authorize to be operated, piloted, or navigated within this state any civil aircraft domiciled in this state unless the aircraft has a current certificate of registration issued by the department.

(b) The restriction described in Subsection (1)(a) does not apply to aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of the registered aircraft or to a non-passenger-carrying flight solely for inspection or test purposes authorized by the Federal Aviation Administration to be made without the certificate of registration.

(2) Aircraft centrally assessed by the State Tax Commission are exempt from the state registration requirement under Subsection (1).

(3) Unmanned aircraft as defined in Section 72-14-102 are exempt from the state registration requirement under Subsection (1).

Utah Code Ann. §72-10-110 sets out requirements for when an aircraft is required to be registered in this state as follows:

...

(2) (a) Except as provided in Subsection (3), at the time application is made for registration or renewal of registration of an aircraft under this chapter, an annual registration fee of 0.4% of the average wholesale value of the aircraft shall be paid.

(b) For purposes of calculating the average wholesale value of an aircraft under Subsection (2)(a) or (3)(d), the department shall use the average wholesale value as stated in the Aircraft Bluebook Price Digest.

(c) For an aircraft not listed in the Aircraft Bluebook Price Digest, the department shall calculate the average wholesale value of the aircraft using common industry standards.

(d) (i) An owner of an aircraft may challenge the department's calculation of the average wholesale value of the aircraft. (ii) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish a process for challenging the department's calculation under Subsection (2)(d)(i).

(3) (a) An annual registration fee of \$100 is imposed on an aircraft that is used: (i) exclusively by an entity that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code, and exempt from property taxation under Title 59, Chapter 2, Property Tax Act; and (ii) for the emergency transportation of medical patients for at least 95% of its flight time.

(b) An annual registration fee is imposed on an aircraft 60 years or older equal to the lesser of: (i) \$100; or (ii) the annual registration fee provided for under Subsection (2)(a).

(c) (i) Except as provided in Subsection (3)(c)(iii), an owner of an aircraft shall apply for a certificate of registration described in Section 72-10-109, if the aircraft: (A) is in the manufacture, construction, fabrication, assembly, or repair process; (B) is not complete; and (C) does not have a valid airworthiness certificate. (ii) An aircraft described in Subsection (3)(c)(i) is exempt from the annual registration fee described in Subsection (2)(a). (iii) The registration

requirement described in Subsection (3)(c)(i) does not apply to an aircraft that, in accordance with Section 59-12-104, is exempt from the taxes imposed under Title 59, Chapter 12, Sales and Use Tax Act.

....

The statute of limitations for issuing an assessment is provided at Utah Code §59-1-1410³ as follows:

(1) (a) Except as provided in Subsections (3) through (7) and Sections 59-5-114, 59-7-519, 59-10-536, and 59-11-113, the commission shall assess a tax, fee, or charge within three years after the day on which a person files a return.

(b) Except as provided in Subsections (3) through (7), if the commission does not assess a tax, fee, or charge within the three-year period provided in Subsection (1)(a), the commission may not commence a proceeding to collect the tax, fee, or charge.

(2) (a) Except as provided in Subsection (2)(b), for purposes of this part, a return filed before the last day prescribed by statute or rule for filing the return is considered to be filed on the last day for filing the return.

....

(3) The commission may assess a tax, fee, or charge or commence a proceeding for the collection of a tax, fee, or charge at any time if:

(a) a person: (i) files a: (A) false return with intent to evade; or (B) fraudulent return with intent to evade; or (ii) fails to file a return; or

(b) the commission estimates the amount of tax, fee, or charge due in accordance with Subsection 59-1-1406(2).

(4) The commission may extend the period to assess a tax, fee, or charge or to commence a proceeding to collect a tax, fee, or charge if:

(a) the three-year period under Subsection (1) has not expired; and

(b) the commission and the person sign a written agreement: (i) authorizing the extension; and (ii) providing for the length of the extension.

The Tax Commission is authorized to administer sales and use taxes at Utah Code §59-12-118, as follows:

Except as provided in Section 59-12-209, the commission shall have exclusive authority to administer, operate, and enforce the provisions of this chapter including:

(1) determining, assessing, and collecting any sales and use tax imposed pursuant to this chapter;

(2) representing each county, city, and town's interest in any administrative proceeding involving the state or local option sales and use tax;

(3) adjudicating any administrative proceedings involving the state or local option sales and use tax;

³ Both the Petitioner in his exhibits and the Division in its Answer to Motion to Dismiss and Counter Claim, pg. 2, submitted on DATE, cited that the applicable statute of limitations was found at Utah Code §59-12-110, but they were citing to a version of Utah Code §59-12-110 which was repealed by 2009 General Session S.B. 108, Tax Commission Administration, Collection, and Enforcement Amendments. The applicable statute of limitations is currently found at Utah Code §59-1-1410.

- (4) waiving, reducing, or compromising any penalty and interest imposed in connection with any determination of state or local option sales or use tax; and
- (5) prescribing forms and rules to conform with this chapter for the making of returns and for the ascertainment, assessment, and collection of the taxes imposed under this chapter.

The burden of proof and statutory construction provisions for this proceeding are set out at Utah Code §59-1-1417, as follows:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner . . .
- (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:
 - (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and
 - (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

The Division is required to mail notices of deficiency pursuant to Utah Code §59-1-1404(4), as follows:

Subject to Subsection (5), if the commission is required to mail a notice to a person under this part, the commission shall mail the notice to the person at the person's last-known address as shown on the records of the commission.

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).

Utah Administrative Rule R865-19S-2(B) clarifies that “[t]he tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer.”

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.”

No penalties were assessed with the audit. Utah Administrative Rule R861-1A-42 provides guidance regarding the waiver of interest for reasonable cause under Utah Code Ann. §59-1-401 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.

Although the Tax Commission has not issued a publication addressing sales and use taxes on aircraft, the Tax Commission has issued “Frequently Asked Questions Aircraft Sales & Use Tax Review,” published on its website at <https://tax.utah.gov/selfreviews/aircraft/faq.pdf>, which provides the following guidance in relevant part:

The Utah Code states that vehicles subject to titling or registration shall have sales and use tax paid by the purchaser. Aircraft subject to registration are considered vehicles and are subject to sales and use tax. Any civil aircraft located in Utah must have a current certificate of registration to operate in Utah. If the seller of the aircraft is a regular licensed vehicle dealer, the seller is to collect the tax at purchase. Otherwise, the purchaser is responsible for paying sales and use tax directly to the Utah State Tax Commission with form TC-828. The aircraft should be registered with the Utah Department of Transportation, Division of Aeronautics. See udot.utah.gov/aeronautics.

...

An aircraft should be registered with the Utah Department of Transportation, Division of Aeronautics, as soon as the FAA registration is complete. If sales tax is not collected by the seller, it should be paid at that time. Interest is applied from the FAA registration date until the tax is paid.

...

Q: If the aircraft is no longer airworthy, do I still have to pay sales tax?

A: Yes. Sales and use tax is a transaction tax based on the price of the aircraft when it was purchased, unlike a property tax, which is based on the current value of the property. The tax is due based on the purchase price of the aircraft, regardless of whether it is later damaged or loses value.

...

DISCUSSION

On DATE, the Division issued a Statutory Notice-Sales and Use Tax audit (“Notice”) against the Petitioner. The Notice reflects the Division's conclusion that the Petitioner had purchased an aircraft in DATE, for which sales or use tax had never been remitted to the State of Utah. The Notice stated that the aircraft purchased was a AIRCRAFT-1. The Notice also stated the sales price or purchase price upon which sales or use taxes were due was \$\$\$\$\$, and explained the basis for this amount as, “Taxable amount is obtained from Price Digest’s Aircraft

Bluebook. Historical Value Reference is based upon FAA registration information.”⁴ The Property Owner timely submitted an appeal of the Notice to the Utah State Tax Commission and the matter eventually proceeded to this Initial Hearing.

The parties’ arguments as to the facts and the law were contentious, with the Petitioner filing multiple motions prior to the Initial Hearing (“Prehearing Motions”), which were denied at the Initial Hearing.⁵ This decision is being issued based on the merits of the documentary evidence submitted for the Initial Hearing, the legal arguments presented by the parties, the proffers of the parties made at the Initial Hearing and the applicable law.

I. Facts Presented by the Parties:

The facts presented in this matter by the Petitioner were the following. The Petitioner provided an Aircraft Bill of Sale (“Bill of Sale”), which indicated that on DATE, he had purchased from PERSON-1, the AIRCRAFT-2, which is the subject of this appeal. Based on the notice of recordation on the side of the Bill of Sale, the Bill of Sale was recorded with the Federal Aviation Administration (“FAA”) on DATE. The purchase price was not listed on the Bill of Sale, but it was signed by PERSON-1, and listed the name of the buyer as TAXPAYER. The information the Petitioner provided was that PERSON-1 was a private individual, who resided in STATE-1. The Petitioner explained at the hearing that this aircraft was a nonfunctional project aircraft that could not fly at the time of the purchase, and he was never able to obtain a Certificate of Airworthiness before the aircraft was destroyed.

Petitioner also provided a copy of his PayPal account statement to support the purchase price. This statement showed that he made 2 payments of \$\$\$\$\$ each to BUSINESS-1 on DATE. Petitioner provided a screenshot from the website <https://govtribe.com/vendors>, which stated that PERSON-1, was a sole proprietorship registered to do business as BUSINESS-1. The Petitioner

⁴ Notice, pg. DIV019.

⁵ Utah Code Ann. §63G-4-102(4) provides that the Tax Commission may grant “a timely motion to dismiss or for summary judgment if the requirements of 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.” Rule 56 of the Utah Rules of Civil Procedure allows for a Motion for Summary Judgment. Subsection (a) specifically provides, in part: “A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law...” Administrative Rule R861-1A-26(6)(d) sets forth the procedures for formal adjudicative proceedings before the Tax Commission and provides that the presiding officer may, “grant or deny the motion . . .” In regards to the Prehearing Motions, the Administrative Law Judge concluded there were disputes as to material facts and the moving party was not entitled to a judgment as a matter of law.

represented that \$\$\$\$\$ was the purchase price for the aircraft, aircraft motor and the trailer, on which he was able to tow the aircraft.

Petitioner provided some email correspondence that he had with the auditor regarding this purchase. In an email dated DATE, the Petitioner had written to the Division's auditor, RESPONDENT'S REP-3, that he had paid \$\$\$\$\$ for the "project airplane." He explained in that email, "As every inspector of that aircraft had made up reasons outside of FAA or technical manuals to deny my airworthiness certification, I've been unable to use my aircraft." He also stated that the aircraft was destroyed while being towed to STATE-2. In another email, dated DATE, the Petitioner stated he had paid \$\$\$\$\$ total for the "trailer, aircraft, and motor," and about \$\$\$\$\$ of the \$\$\$\$\$ was for the trailer.

The Petitioner explained that he never registered the aircraft with the Utah Division of Aeronautics because he was never able to obtain a Certificate of Airworthiness.

The Petitioner submitted a letter from PETITIONER'S REP-1, dated DATE. In that letter PETITIONER'S REP-1 stated she recalled going with Petitioner to the DMV "to register the trailer that was included in the airplane purchase." She said they were registering "the VEHICLE-1" at the same time and were expecting to pay a total of \$\$\$\$\$ for both. The letter stated:

The girl at the counter was a bit confused with how to process the trailer, as it had a sales price of \$\$\$\$\$, as it was included for free with the airplane purchase. We had the sales receipt for the airplane, with a handwritten addition for the trailer being included for free. This sales receipt was then sent to the FAA for registration, per FAA registration requirements.

She talked with someone in the back and ended up charging our card for around \$\$\$\$\$. We asked for a receipt and did not get one.

Since it appeared that we had paid sales tax on the trailer for the price of the airplane, we did not investigate further.

The Petitioner provided a copy of the trailer registration certificate issued by the Utah Division of Motor Vehicles. This registration certificate showed a transaction date of DATE. This certificate showed that the trailer, a TRAILER-1, was registered on that date with no sales tax paid, but a \$\$\$\$\$ "County Fee" and a \$\$\$\$\$ "State Fee" were imposed, for a total of \$\$\$\$\$. The Petitioner also provided the Utah Division of Motor Vehicle's registration certificate for a ADDRESS-1, with the transaction date of DATE. This indicated \$\$\$\$\$ as the "County Fee" and \$\$\$\$\$ as the "State Fee." The Petitioner also submitted documents he had obtained from the Division during the discovery process. This included a credit card charge receipt from the Division on that day for \$\$\$\$\$, which was the combined total paid for both the trailer and the VEHICLE-1.

Although this documentation supports PETITIONER'S REP-1's statement that they had registered the trailer and the VEHICLE-1 at the same time, it does not support that the amount they were charged was \$\$\$\$\$ or that they had paid sales or use tax on the aircraft purchase. At the hearing, PETITIONER'S REP-1 stated that they had shown the employee of the Division of Motor Vehicles documents regarding the purchase of the aircraft and trailer and she thought their credit card had been swiped to authorize a payment for the sales or use tax for the aircraft purchase transaction. Petitioner explained at the hearing that they had talked with the employee of the Division of Motor Vehicles about the aircraft registration and the employee had said the Division of Motor Vehicles collects the tax and forwards it to a different unit that handles aircraft and that the Petitioner would later receive a receipt. The Petitioner asserted that he was told to fill out a form and the Division of Motor Vehicles would pass along the information to the office that handles aircraft. The Petitioner stated he did not receive a receipt. The Petitioner explained that after the audit had been issued they could not find evidence of a charge for a second amount on that day.

A subpoena was issued to the Division for all of the information regarding these transactions and the trailer and VEHICLE-1 registration information discussed above was the only information submitted. The Petitioner argued that the Division withheld evidence by not performing a thorough search for the records and not providing the alleged registration and receipt information for the aircraft. The Petitioner criticized the delay between the transaction and the audit being nearly ##### years and that he is now not able to obtain his bank records from the period of the purchase or registration.

The Petitioner filed a Utah individual income tax return, Form TC-40, for tax year 2020, and provided a copy of that return for the Initial Hearing. On that return, Line 31 requires the reporting of Utah use tax. The Petitioner left that line blank. The address the Petitioner had provided on that return was ADDRESS-1. At the hearing, there was a discussion about Petitioner's tax year 2019 individual income tax return, which he had filed in DATE. The Division's contention was that the Petitioner did not disclose his aircraft purchase on either his 2019 or 2020 individual income tax return. Petitioner did not provide a copy of his 2019 Utah individual income tax return to show that he had filled in any amount as use tax on that return.

The Division submitted as evidence in this matter pages obtained from REDACTED URL, which search was dated DATE. This document indicated that Petitioner had registered his ownership of the subject aircraft with the FAA. The FAA's certificate of registration issue date was DATE. This document also stated that there was no Certificate of Airworthiness issued for the aircraft.

The Division provided copies of the documentation that the Petitioner had submitted at the time he registered the trailer with the Utah Division of Motor Vehicles. This included a State of STATE-1 Department of Motor Vehicles Certificate of Title for the trailer, which indicated that PERSON-1 had transferred title to the trailer to the Petitioner. It listed Petitioner's address as ADDRESS-1. There was no date of sale listed on the certificate, but PERSON-1 had signed the title over to the Petitioner. The Division included the Bill of Sale for the trailer, which was signed and dated by PERSON-1, on DATE, and indicated the sale price amount was \$\$\$\$\$. The Petitioner also submitted a Vehicle Application for Utah Title regarding the trailer. On this form, which appears to have been signed by Petitioner, the purchase price was listed as \$\$\$\$\$. The Petitioner listed his address on this form as ADDRESS-1. A Certificate of Inspection was also included, which appeared to be signed by an officer from POLICE DEPARTMENT-1, on DATE, regarding the trailer.

The Division provided the first letter it had issued to the Petitioner regarding the aircraft. This letter was dated DATE, and was mailed to TAXPAYER address at ADDRESS-1. This letter stated, "The Tax Commission reviews FAA records of all aircraft registered or located in Utah to ensure sales and use tax has been properly paid. Our review shows you have registered an aircraft with the FAA on which Utah sales and use tax may be due." This letter explained:

Aircraft operated in Utah must be registered annually with the Utah Department of Transportation, Division of Aeronautics. You can register with them as soon as you have registered with the FAA. See udot.utah.gov/aeronautics for further information.⁶

⁶ This website was accessed on DATE, and as of that date, under the heading Registration Information & Policies, it stated, "All airworthy aircraft which are based in or operate in the State of Utah for more than 180 days of the year are subject to aircraft registration fees." Then, in the General Information section the following question and answer is listed: "What is a 'Utah based' aircraft?" "An air-worthy aircraft in Utah for the cumulative majority of a year." The following question and answer is also listed in the General Information section: "What if the aircraft's FAA Air Worthiness Certificate is invalid?" "Aircraft that are (A) in the manufacture, construction, fabrication, assembly, or repair process; (B) are not complete; and (C) do not have a valid airworthiness certificate are exempt from annual registration fees, and must complete an 'Aircraft Not Airworthy' agency action request on the Utah registration portal to have their fees waived." <https://udot.utah.gov/connect/public/aircraft-registration/>. Further, the Utah Department of Transportation website for "Sales and Use Tax for Utah Aircraft" provides a link to tax.utah.gov/sales/aircraft-sales-tax that states:

Frequently Asked Questions
What is sales and use tax?

Sales and use tax is a transaction tax that applies to most purchases of tangible personal property. When a seller does not charge Utah sales tax, the purchaser is responsible for paying the (use) tax. For aircraft purchases where the seller did not collect sales tax, use Tax Commission form TC-828, *Aircraft Sales and Use Tax Remittance Form*.

How do Utah tax laws, rules, and regulations require sales or use tax to be paid on aircraft?

The Division provided a copy of a second notice that the Division issued to the Property Owner on DATE to the same ADDRESS-1 address. This notice also included a Summary form, which the Division requested the Petitioner fill out and return. The Division then issued the Notice on DATE. The Notice was mailed to a new address for Petitioner, at ADDRESS-2. The Notice estimated the sales price of the aircraft to be \$\$\$\$\$. The Division provided a copy of the Petition for Redetermination form that the Petitioner had filled out to file this appeal. On that form, Petitioner listed as his mailing address, ADDRESS-2.

The Division also submitted a blank Form TC-828, Aircraft Sales and Use Tax Remittance Form ("Form TC-828"). The Division's representatives stated that the Petitioner should have filled out this form and submitted it with the sales tax when he purchased the aircraft, but Petitioner had not done so. The instructions on this form state, "Submit this form and pay the tax due within 10 days from the date of registration . . ." At the hearing, the Division explained that the Utah Division of Aeronautics gives Form TC-828 to persons who register an aircraft with that agency. The Division asserted that Form TC-828 is the preferred method for individuals to pay sales tax on aircraft that was purchased from a seller who was not a licensed dealer. However, the Division stated that claiming use tax on the Utah individual income tax return, Form TC-40, was also an acceptable method of paying a use tax liability.

The Division asserted that it had provided to Petitioner all the documentation from the Division of Motor Vehicles office in regards to the aircraft or trailer and that there was no documentation to indicate Petitioner had paid sales or use tax for the aircraft on or around DATE.

At the hearing, after reviewing the PayPal documents provided by the Petitioner, the Division agreed that the Petitioner had provided sufficient evidence to support that the purchase

Under Utah law, all vehicles (including aircraft) subject to titling or registration must show that sales tax was paid to the state. Any civil aircraft located in Utah must also have a current certificate of registration to operate in Utah. If the seller of the aircraft is a Utah licensed vehicle dealer, the seller is to collect the tax at purchase. Otherwise, the purchaser is responsible for paying sales and use tax directly to the Utah State Tax Commission using form TC-828, *Aircraft Sales and Use Tax Remittance Form*.

Aircraft are registered through the Utah Department of Transportation, Division of Aeronautics. Additional information is available at udot.utah.gov/aeronautics.

What sales tax rate do I use?

Sales and use tax is calculated by multiplying the purchase price by the jurisdiction tax rate. The jurisdiction's tax rate is based on the aircraft's registration address filed with the FAA. A credit is allowed against the purchase price for the value of other aircraft or vehicles' trade-ins. See Publication 5 for detailed information about the trade-in exemption.

price for the aircraft had been \$\$\$\$\$. The Division stated that based on this amount the revised deficiency was \$\$\$\$\$ in sales or use tax and the interest amount was \$\$\$\$\$, calculated through the date of the Initial Hearing.

II. Summary of the Parties' Legal Arguments:

The Petitioner argued that he was unable to “register” the aircraft in this state because it was never a functioning or operable aircraft. The Petitioner cited to Utah Code §72-10-109 and Utah Code §72-10-110. The Petitioner asserted that because he was unable to register the aircraft, he was unable to pay sales or use tax. The Petitioner argued, in the alternative, that he had paid sales tax on his purchase of the aircraft at the time he went into the Division of Motor Vehicles office on DATE, and registered the trailer and his VEHICLE-1, and the Division should have provided copies of these documents. The Petitioner challenged the Division’s position that he should have filed a Form TC-828 and paid the sales tax with that form, claiming this requirement was not in the law. The Petitioner argued that the Division’s audit was barred by the statute of limitations based on his individual income tax filing for tax year 2019, citing Utah Code Sec. 59-12-110. The Petitioner argued the position that the purchase price for the aircraft was \$\$\$\$\$, and the Division agreed with the Petitioner on this point. Finally, the Petitioner alleged that the Tax Commission and/or the Division violated the Petitioner’s rights under the Fourth Amendment, Fifth Amendment, and Fourteenth Amendment of the Constitution of the United States, in part because he never received the first and second notices from the Division, which were mailed to his former Utah address after he had moved to STATE-2.

The Division argued that the assessment was not barred by the statute of limitations because the three-year statute of limitations does not apply if a taxpayer fails to file a return. The Division argued Petitioner should have filed a Form TC-828 and paid the sales tax on the aircraft at the time of the registration with the FAA, or that he could have claimed and paid use tax on his Utah Form TC-40, but had failed to do so. The Division stated that the Petitioner had filed Utah Forms TC-40 for tax years 2019 and 2020, but because he had not filled in any use tax amount that constituted a failure to file. The Division argued sales or use tax is imposed pursuant to Utah Code §59-12-103(1). The Division argued that the Petitioner has the burden of proof in this matter.

III. Commission Analysis and Conclusion

Utah imposes sales and use taxes on the purchaser pursuant to Utah Code §59-12-103(1)(i) “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 Administrative Rule R865-19S-2(B) clarifies that “[t]he tax is not upon the

articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer.” In this matter, the facts indicate that the Petitioner purchased a nonfunctioning aircraft from a private individual in STATE-1. The private individual seller did not collect Utah sales tax from the Petitioner on the transaction and did not remit sales tax to the Tax Commission. In situations where the seller does not collect the sales tax on a vehicle sale, Utah Code §59-12-107(7) states, “(a) On each vehicle⁷ 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.” In general, Utah Code §59-12-107(2)(f) provides, “A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if: (i) the seller did not collect a tax imposed by this chapter on the transaction; and (ii) the person: (A) stores the tangible personal property . . . in the state; (B) uses the tangible personal property . . . in the state; or (C) consumes the tangible personal property . . . in the state.”

A. Utah Statute Required Payment of Sales or Use Tax and the Audit was not Barred by the Statute of Limitations

The applicable law for the statute of limitations on the issuance of an audit deficiency is found at Utah Code §59-1-1410, which provides, “(1)(a) Except as provided in Subsections (3) through (7) . . . the commission shall assess a tax, fee, or charge within three years after the day on which a person files a return.” However, Utah Code §59-1-1410(3) provides the following exception to the three-year statute of limitations period: “The commission may assess a tax, fee, or charge or commence a proceeding for the collection of a tax, fee, or charge at any time if: (a) a person: (i) files a: (A) false return with intent to evade; or (B) fraudulent return with intent to evade; or (ii) fails to file a return . . .” There is no allegation or information to support that the Petitioner filed a false or fraudulent return. The issue is whether the Petitioner failed to file a return to report the sales or use tax.

The Division argued that the Petitioner failed to file Form TC-828 and pay the tax with that form. The Division indicated that the Petitioner would have been given Form TC-828 if the Petitioner registered the aircraft with the Utah Department of Transportation, Division of Aeronautics. However, the Petitioner argued that because he had not been able to obtain a Certificate of Airworthiness, he was not required to register the aircraft with the Utah Department of Transportation, Division of Aeronautics.⁸ In analyzing these positions, the Commission notes

⁷ “Vehicle” is defined at Utah Code §59-12-102(142) to include an aircraft.

⁸ Petitioner had registered the purchase of the aircraft with the FAA, as noted above.

that Utah Code §72-10-109(1)(a) provides, “A person may not operate, pilot, or navigate, or cause or authorize to be operated, piloted, or navigated within this state any civil aircraft domiciled in this state unless the aircraft has a current certificate of registration issued by the department.” The facts in this appeal indicated that the Petitioner was not able to “operate, pilot, or navigate” the subject aircraft in Utah due to not having the required Certificate of Airworthiness.

However, it is Utah Code §72-10-110 that is applicable in this matter. Utah Code §72-10-110(3)(c)(i) provides, “Except as provided in Subsection (3)(c)(iii), an owner of an aircraft shall apply for a certificate of registration described in Section 72-10-109, if the aircraft: (A) is in the manufacture, construction, fabrication, assembly, or repair process; (B) is not complete; and (C) does not have a valid airworthiness certificate.” Based on this provision, the Petitioner was required to register the subject aircraft. Utah Code §72-10-109(3)(c)(ii) provides an exemption from the 0.4% annual registration fee that is based on the wholesale value of an aircraft for an aircraft that does not have a valid airworthiness certificate, but does not provide an exemption from sales or use taxes.

Utah Code §59-12-107(7) sets out how the sales or use tax is to be paid when an aircraft sale is made by other than a licensed vehicle dealer, which is 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 aircraft was subject to registration under Utah Code §72-10-110(3)(c).⁹ The Petitioner had purchased the aircraft from a seller who was not a licensed vehicle dealer. Therefore, the Petitioner should have paid the sales or use tax as the Division had noted, by filing Form TC-828 and remitting the payment with that form. The Petitioner had argued that he was not required by law to file Form TC-828. However, he was clearly required to pay the sales or use tax pursuant to Utah Code §59-12-103(1)(l) and the Tax Commission has “exclusive authority” for “prescribing forms and rules to conform with this chapter for the making of returns and for the ascertainment, assessment, and collection of the taxes imposed” under the Sales and Use Tax Act, pursuant to Utah Code §59-12-118. The Commission has prescribed Form TC-828 to be filed for the ascertainment, assessment and collection of sales tax on aircraft purchased from a private seller. The Petitioner did not submit Form TC-828 at the time of the purchase of his aircraft. Therefore, the Petitioner failed to file a return, and based on that failure

⁹ Even if there was not a registration requirement, the sales and use tax obligation on the Petitioner’s purchase of the aircraft is not dependent on registration. Sales and use taxes are imposed pursuant to Utah Code §59-12-103(1)(l) on “amounts paid or charged for tangible personal property if within this state the tangible personal property is: (i) stored; (ii) used; or (iii) consumed.” The Petitioner had purchased the aircraft in STATE-1 and brought it to Utah where it was, at the very least, “stored.”

the three-year statute of limitations does not apply under Utah Code §59-1-1410(3) and “[t]he commission may assess a tax, fee, or charge or commence a proceeding for the collection of a tax, fee or charge at any time”

In situations where the seller does not collect the sales tax, Utah Code §59-12-107(2)(f) provides that the Taxpayer should have then paid use tax on the transaction. The Division has stated that the Petitioner could have paid the use tax pursuant to Utah Code §59-12-107(2)(f), by claiming the use tax on his Utah individual income tax return. Although Petitioner had filed a Form TC-40, Utah Individual Income Tax Return, for both tax years 2019 and 2020, he did not show that he had claimed any use tax on either of those returns. The Petitioner should have filed and used the Form TC-828. The fact that there was another way to pay the tax does not negate the requirement to file Form TC-828, especially in this matter where the Petitioner did nothing in regards to claiming use tax on his individual income tax returns.¹⁰

B. Burden of Proof and Amount of Audit Deficiency

Pursuant to Utah Code §59-1-1417(1), the Petitioner has the burden of proof in this matter. The Petitioner did not establish that he had paid sales tax on the purchase of the aircraft. However, the Petitioner provided some documentation to support that his purchase price for the aircraft had been \$\$\$\$\$, and the Division agreed with that amount at the Initial Hearing. Therefore, there is sufficient evidence to find that the purchase price of the aircraft was \$\$\$\$\$. The sales and use tax amount owing should thus be reduced to \$\$\$\$\$. The accrued interest, should be adjusted on that basis.

C. There is No Basis for Waiver of Interest

Interest is imposed on the audit deficiency pursuant to Utah Code Ann. §59-1-402(5). 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.” No penalties were assessed with the audit. Utah

¹⁰ In *Whitmore Oxygen Co. v. State Tax Comm'n*, 114 Utah 1, 11-12, 196 P.2d 976, 978, 1948 Utah LEXIS 111, *13-16, the Utah Supreme Court considered a Sales and Use Tax Form 71, provided for businesses to report both sales and use tax on one form. The court concluded in that case, “The plaintiff not having by words, statements, or figures indicated in the body of the use tax division of the form that it intended this portion of the form to be treated as part of the completed form, we hold the return was not sufficient to start the statute of limitations running against a use tax.” See also, *Illinois Powder Mfg. Co. v. State Tax Comm'n*, 117 Utah 511, 514, 217 P.2d 580, 581, 1950 Utah LEXIS 129, *3; *People v. Universal Film Exchanges, Inc.*, 34 Cal. 2d 649, 213 P.2d 697, 1950 Cal. LEXIS 276; *Iowa Tax* LEXIS 38, *3-5, 2006 Iowa Tax LEXIS 38; *Henk v. Columbus Auto Supply, Inc.*, 257 Minn. 255, 267, 101 N.W.2d 415, 423, 1960 Minn. LEXIS 527, *23-24, 5 A.F.T.R.2d (RIA) 826; *McDonald's Executive Offices v. Nebraska Dep't of Revenue*, 243 Neb. 82, 89-91, 497 N.W.2d 377, 381-382, 1993 Neb. LEXIS 115, *13-16.

Administrative Rule R861-1A-42 provides guidance regarding the waiver of interest for reasonable cause under Utah Code §59-1-401. Pursuant to Utah Administrative Rule R861-1A-42(2), “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.” The Petitioner has not established a basis for waiver of interest in this matter.

D. Petitioner’s Allegations of Constitutional Violations

The Petitioner argued that the Division’s actions violated his rights under the Fourth Amendment, Fifth Amendment, and Fourteenth Amendment of the Constitution of the United States. Petitioner’s basis for some of this argument was Petitioner’s contention that the Division had mailed the first notice on DATE, and the second notice on DATE, to the Petitioner's former address in ADDRESS-1. The Division had mailed the final Notice of Deficiency on DATE, to the Petitioner’s current address. However, pursuant to Utah Code §59-1-1404(4), the Division is required to mail a notice to the “last known address on the records of the commission.” Clearly with the 2020 Utah individual income tax return filing and the registration of the trailer and the VEHICLE-1 in 2020, the ADDRESS-1 address was an address of record for the Petitioner. The Petitioner has not established a mailing address error. Furthermore, the Utah Supreme Court has previously held that the Utah State Tax Commission lacks authority to determine the constitutionality of Utah laws, finding “[i]t is not for the Tax Commission to determine questions of legality or constitutionality of legislative enactments . . .” *Salt Lake County v. Tax Commission*, 2023 UT 24, ¶16. *Citing Durbano Props., LC v. Utah State Tax Comm’n*, 2023 UT 6, ¶9. *See also Steiner v. Tax Commission*, 2019 UT 47, ¶11; *Jim Nebeker Trucking v. Utah State Tax Comm’n*, 2001 UT 74, ¶18; *State Tax Commission v. Wright*, 596 P.2d 634 (Utah 1979). Therefore, the Tax Commission declines to opine on the constitutional claims asserted by the Petitioner in this matter.

After consideration of the facts presented in the Initial Hearing, the applicable law and the arguments of the parties, as discussed above, based on the statutory provisions of the Utah Code, the Petitioner was required to pay sales or use tax on the purchase of the subject aircraft and the Petitioner failed to pay the tax. Additionally, the Petitioner failed to file a Form TC-828 or remit the sales or use tax owed in any other manner. Therefore, the Commission may assess a tax at any time and is not subject to a three year statute of limitations. However, the Petitioner has provided sufficient evidence to support a lower purchase price for the subject aircraft of \$\$\$\$\$. This is lower than the purchase price of \$\$\$\$\$ that the Division had used to determine the audit deficiency. The audit assessment should be adjusted based on the \$\$\$\$\$ purchase price and the interest adjusted to that deficiency amount.

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Division's DATE, Statutory Notice of Sales and Use tax audit deficiency should be amended to a sales and use tax deficiency of \$\$\$\$\$ and the interest should be revised on that basis. The Division is hereby ordered to adjust its audit accordingly. 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 ____, 2025.

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.