APPEAL #: 24-1689
TAX TYPE: AUDIT - SALES & USE TAX
TAX YEAR: 2023
DATE SIGNED: 07/17/2025
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, 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. 24-1689 Account No: ##### Tax Type: Audit - Sales & Use Tax Tax Year: 2023 Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER
For Respondent: RESPONDENT'S REP-1, Tax Examiner Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on February 5, 2025, for an Initial Hearing in accordance with Utah Code §59-1-502.5. The matter before the Tax Commission is based on an appeal filed by Petitioner ("Taxpayer"), in which the Taxpayer requested a waiver of a $$$$$ penalty for intent to evade tax imposed as the result of a sales and use tax audit. The Respondent ("Division") had issued an audit Notice of Deficiency on DATE, imposing $$$$$ in additional tax, the $$$$$ intent to evade penalty, and interest.[1] The audit was related to the Taxpayer's purchase of a motor vehicle. The Taxpayer timely appealed this action pursuant to §59-1-501 and the matter proceeded to this Initial Hearing.

APPLICABLE LAW

Utah Code §59-12-103(1)(a) provides for a tax on retail sales of tangible personal

[1] The Taxpayer has paid the audit amount.

property made within the state.

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

"Purchase price" and "sales price" are defined at Utah Code §59-12-102(107) as follows:

> (107) (a) "Purchase price" and "sales price" mean the total amount of consideration: (i) valued in money; and (ii) for which tangible personal property, a product transferred electronically, or services are: (A) sold; (B) leased; or (C) rented.
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> . . .

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

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

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

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

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

Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part. Utah Code Ann. §59-1-401(14).

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

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

Utah Code Ann. §59-1-1417(1) dictates which party has the burden of proof as follows:

> (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:
> (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
> (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
> (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income: (i) required to be reported; and (ii) of which the commission has no notice at the time the commission mails the notice of deficiency

Regarding information presented at Initial Hearings, Utah Code Sec. 59-1-502.5 provides as follows:

> (1) At least 30 days before any formal hearing is held in response to a party's request for agency action, one or more tax commissioners or an administrative law judge designated by the commission shall hold an initial hearing at which proffers of evidence, including testimony, documents, and other exhibits may be made and oral or written argument on legal issues may be received.
> . . . .
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> (4) A record may not be kept of the initial hearing and all initial hearing proceedings are privileged and do not constitute admissions against interest of any party participating in the hearing.

DISCUSSION

I. Applicable Facts

On DATE, the Taxpayer filed his Petition for Redetermination appealing the fraud penalty imposed in regards to the registration of a VEHICLE-1. The Taxpayer purchased the vehicle on or around DATE. When registering the vehicle with the Division, the Taxpayer had stated on the Vehicle Application for Utah Title form that the purchase price of the vehicle was $$$$$. The Taxpayer had signed and dated the form DATE, under the statement, "I declare that I am the owner of the vehicle described on this application and the above information is accurate and true." However, the Taxpayer had submitted with the application a Bill of Sale, signed by the seller of the vehicle, that stated the purchase price was $$$$$, and the Taxpayer paid sales tax based on a $$$$$ purchase price.

The Division had then subpoenaed information about the purchase from the lienholder, FINANCIAL INSTITUTION-1. In response to the subpoena, the credit union supplied the Applicant Worksheet, Loan and Security Agreements and Disclosure Statement, and the Collateral Worksheet. These documents established that the Taxpayer had obtained a loan on DATE, in the amount of $$$$$, which FINANCIAL INSTITUTION-1 paid toward the seller's loan on the vehicle. The Division had concluded from these documents that the purchase price for the vehicle had been $$$$$. The Division then issued the audit deficiency on the basis that the sales tax amount had been underpaid and the Division assessed additional sales tax in the amount of $$$$$ and imposed the intent to evade penalty pursuant to Utah Code Sec. 59-1-401(7)(a)(iii). The amount of the penalty for intent to evade a tax, fee, or charge, is the greater of $500 or 50% of the entire underpayment. In this matter, because the underpayment of tax was $$$$$, and %%%%% of that amount would be $$$$$, the greater amount of $$$$$ was the penalty imposed.

II. Petitioner's Position

At the Initial Hearing, the Taxpayer explained that this was the first time he had purchased a car from a private seller and he had thought from his negotiations with the seller that he would pay the seller $$$$$, and then would be "taking over his loan." He stated that when he got to the credit union to complete the purchase transaction with the seller, he realized that instead he was taking out a new loan, which would be used to pay off the seller's loan. He stated he was only ##### years old at the time and he thought the purchase price was the $$$$$ that he had paid to the seller and not the loan amount, which went to pay off the seller's loan balance.

III. Division's Position

At the hearing, the Division representative explained the "purchase price" or "sales price" includes any loan payment amounts pursuant to Utah Code §59-12-102(107). He also explained that at the time the Division had performed the audit, the Division had concluded the purchase price for the vehicle was the $$$$$ loan amount and now, based on what the Taxpayer had explained at the hearing, the purchase price had been that amount plus the $$$$$ cash the Taxpayer had paid to the seller, which would make the additional tax $$$$$, instead of the $$$$$ amount imposed in the audit.

IV. Commission's Conclusions

Upon reviewing the facts and the applicable law in this matter, the Division has imposed the intent to evade a tax penalty pursuant to Utah Code §59-1-401(7)(a)(iii), which is the greater of $500 or 50% of the unpaid tax amount. Unlike a fraud with intent to evade penalty pursuant to Utah Code §59-1-401(7)(a)(iv), which imposes a 100% penalty, but places the burden of proof on the Division, the burden of proof is on the taxpayer in a matter involving intent to evade. The Utah Court of Appeals has explained that "intent to evade" means the taxpayer "must have a conscious desire to avoid a legal requirement with which the actor knows he or she is obligated to comply; it is not sufficient that the actor merely intends not to do that which [**12] the law, in fact, may require." (Internal Citation Omitted.) *Clements v. Utah State Tax Comm'n, Collection Div., 893 P.2d 1078, 1082, 1995 Utah App. LEXIS 26, *11-12, 261 Utah Adv. Rep. 39.* In this matter, the Taxpayer had stated on the Vehicle Application for Utah Title form that the purchase price of the vehicle was $$$$$ and had signed that form under the statement, "I declare . . . this application and the above information is accurate and true." At the Initial Hearing, the Taxpayer had argued that he thought the purchase price meant just the cash amount of $$$$$ and that he misunderstood that the loan amount was part of the purchase price, which is both inconsistent with his stating the purchase price was $$$$$ on the form and implausible. The proceeds from the Taxpayer's loan that were paid to clear the seller's loan on the vehicle is part of the "purchase price" or "sales price" as that is defined at Utah Code §59-12-102(107). Clearly at the time the Taxpayer registered the subject vehicle he understood the purchase price was not $$$$$. Therefore, the Taxpayer has not met the burden of proof to establish that the intent to evade penalty was not properly imposed.

Regarding the fact that the Taxpayer had indicated at the hearing that he had paid $$$$$ plus the loan amount, the Division would have the burden of proof under Utah Code §59-1-1417(1)(c) to assert that a higher amount of tax is owed after issuing a Notice of Deficiency showing a lower amount of tax is owed. The Division had not as of the hearing date issued an amended or increased Notice of Deficiency beyond the deficiency calculated on the loan amount of $$$$$ and the Commission declines to increase the amount of the deficiency in this decision. The Commission points out to the parties that pursuant to Utah Code 59-1-502.5(4) "A record may not be kept of the initial hearing and all initial hearing proceedings are privileged and do not constitute admissions against interest of any party participating in the hearing."

Utah Code §59-1-401(14) provides that the Tax Commission may waive, reduce, or compromise any of the penalties or interest imposed under this part upon reasonable cause being shown. As the Division has pointed out, however, Utah Admin. Rule R861-1A-42(4)(d), which provides guidance on what constitutes reasonable cause, specifically provides that "[i]ntentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance." Therefore, because the Taxpayer has been shown to have intent to evade sales and use taxes, the Taxpayer has not established reasonable cause for waiver of the penalty.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the intent to evade penalty issued on the DATE Notice of 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 _____, 2025.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner