

10-2596
TAX TYPE: SALES TAX
TAX YEAR: 2010
DATE SIGNED: 3-15-12
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: B. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 10-2596</p> <p>Account No. ##### Tax Type: Sales Tax</p> <p>Judge: Phan</p>
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Presiding:

Michael Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER REPRESENTATIVE
TAXPAYER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General
RESPONDENT-1, Assistant Director Auditing
RESPONDENT-2, Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 30, 2012, in accordance with Utah Code §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (“Taxpayer”) timely appealed a Statutory Notice–Sales and Use Tax (“Audit”) issued on September 15, 2010, and the matter proceeded to the Formal Hearing before the Utah State Tax Commission.
2. The Audit indicated a deficiency in sales and use tax in the amount of \$\$\$\$ under Utah Code Sec. 41-1a-510, 41-1a-508 and 59-12-107, as well as imposed a fraud penalty in the amount of \$\$\$\$ pursuant to Utah Code Sec. 59-1-402(5). However, at the hearing, Respondent (“Division”) explained that they had revised the assessment downward. It was the

Division's request that its revised assessment in the amount of \$\$\$\$ in tax, \$\$\$\$ in fraud penalty and the interest accrued thereon be upheld. The amount of the revised assessment was based on a taxable amount of \$\$\$\$\$. Interest continues to accrue until the balance is paid.

3. The tax and penalty were assessed for the underpayment of sales and use tax on the Taxpayers' purchase of a YEAR VEHICLE, which the Taxpayer had registered in Utah on DATE AND YEAR-1. At the time of registration the Taxpayer presented a Bill of Sale to the Division of Motor Vehicles that stated that the vehicle was purchased for a price of \$\$\$\$\$. This bill of sale was dated DATE AND YEAR-1 and had been signed by NAME-1, the seller.

4. When registering the vehicle, the Taxpayer had filled out and submitted an Application for Change of Title form and submitted the form to the Division of Motor Vehicles. On that form the Taxpayer had written that the purchase price was \$\$\$\$\$. The Taxpayer then signed the form. There is a second signature on that form in the space for "Owner's Signature". The second signature is not legible but the other person listed on that form as the owner of the vehicle was TAXPAYER RERPRESENTATIVE. Based on the claim that the purchase price was \$\$\$\$\$, sales tax was calculated and paid on that amount.

5. The Division of Motor Vehicles flagged the application for audit.

6. Auditing Division employees reviewed the application and bill of sale and audited the transaction. FINANCIAL INSTITUTION-1 was shown as the lien holder on the title. The Division subpoenaed the loan documentation from FINANCIAL INSTITUTION-1. Received from the FINANCIAL INSTITUTION-1 was a Loan Liner Security Agreement. That documentation indicated that the amount of the loan on the vehicle was \$\$\$\$\$ and was dispersed as follows: \$\$\$\$\$ to FINANCIAL INSTITUTION-2; \$\$\$\$\$ to NAME-1 or NAME-2; and \$\$\$\$\$ paid to another account number. It was established at the hearing that NAME-1 and NAME-2 were the sellers of the vehicle and FINANCIAL INSTITUTION-2 was the lien holder prior to the Taxpayer's purchase on an obligation owed by the sellers. It is unclear from the loan information who received the remainder of the loan, which would have been \$\$\$\$\$, but at the hearing the Division indicated that they were satisfied that this amount was paid into the Taxpayer's account.

7. The revised audit had been based on a purchase price of \$\$\$\$\$. This was from the \$\$\$\$\$ paid to FINANCIAL INSTITUTION-2 and the \$\$\$\$\$ paid to NAME-1 or NAME-2. The original audit had been based on a purchase price of \$\$\$\$\$, the full amount of the loan.

8. The Security Agreement provided by the FINANCIAL INSTITUTION-1 listed as the security for the loan, the YEAR VEHICLE TYPE and listed as the collateral value from this vehicle an amount of \$\$\$\$\$.

9. The Taxpayer also submitted a letter from NAME-3, CITY AND NAME OF BRANCH, FINANCIAL INSTITUTION-1. The letter stated, “On DATE AND YEAR-2 TAXPAYER and TAXPAYER REPRESENTATIVE were approved for an auto loan. The auto loan for the VEHICLE was funded for the amount of \$\$\$\$\$. Due to the value of the auto at that time the loan officer was only willing to do a percentage of the value of the vehicle.”

10. The Taxpayer and TAXPAYER REPRESENTATIVE were present at the hearing. TAXPAYER REPRESENTATIVE represented the Taxpayer at the hearing. It was his testimony that “we knew” we gave the \$\$\$\$\$ for the vehicle but maintains in testimony that what was meant by “purchase price” was not fully understood. He testified that they did not know that the amount that went to pay off the prior lien holder of \$\$\$\$\$ was considered part of the purchase price. Additionally, he testified that the \$\$\$\$\$ paid directly to the sellers was not part of the purchase price but was instead a “gift”. He explained that this amount was in essence in appreciation for how the sellers worked with them on the sale of the vehicle.

11. TAXPAYER REPRESENTATIVE acknowledged that there had been no separate amount of \$\$\$\$\$ paid to the sellers of the vehicle.

12. He testified that there was no information on the Tax Commission Motor Vehicle Division Website regarding registration of a vehicle that explained what was included in the “purchase price.” The information did say to provide a Bill of Sale and he pointed out that they had provided the Bill of Sale.

13. TAXPAYER REPRESENTATIVE also acknowledged when asked that they were aware a lower purchase price would result in a lower sales tax amount.

14. TAXPAYER REPRESENTATIVE asserted that some of the gift amount had been for accessories including an ACCESSORY-1 and ACCESSORY-2.

15. It was TAXPAYER REPRESENTATIVE’S position that if he or the Taxpayer did not know that the amounts should have been included in the “purchase price” then they could not have committed fraud with the intent to evade the tax.

16. RESPONDENT-2 was a witness for the Division in this matter and is a Tax Audit Manger. It was his testimony that consumers are in the position to know what they paid for a vehicle. When asked whether it was possible if the Taxpayer just did not understand, he stated based on the documentation it was his opinion that it was not possible.

17. The total consideration paid for the vehicle was \$\$\$\$\$.

APPLICABLE LAW

The payment of sales tax is required to be paid before a certificate of title may be issued, in accordance with Utah Code §41-1a-510, below in pertinent part:

- (1) (a) Except as provided in Subsection (1)(b), the division before issuing a certificate of title to a vehicle, vessel, or outboard motor shall require from every applicant:
 - (i) a receipt from the division showing that the sales tax has been paid to the state on the sale of the vehicle, vessel, or outboard motor upon which application for certificate of title has been made; or
 - (ii) a certificate from the division showing that no sales tax is due.
- (b) If a licensed dealer has made a report of sale, no receipt or certificate is required.

Use tax is imposed under the following circumstances, as provided in Utah Code §59-12-107(d), below:

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.

Penalties are imposed for the underpayment of tax under Utah Code §59-1-401(7), set forth below in pertinent part:

- (a) Additional penalties for underpayments of tax are as provided in this Subsection (7)(a)...
- (iv) If the underpayment is due to fraud with intent to evade the tax, the penalty is the greater of \$500 per period or 100% of the underpayment.

“Purchase Price” is defined at Utah Code 59-12-102 (87) as follows:

“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.

Utah Code §59-1-1417 provides, “[i]n 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: (1) whether the petitioner committed fraud with intent to evade a tax, fee, or charge...”

DISCUSSION

Taxpayers generally have the burden of proof in proceedings before the Tax Commission pursuant to Utah Code §59-1-1417. During the course of the hearing the Taxpayer argued that he was not aware that the “purchase price” of the vehicle included any and all amounts paid to the sellers directly and any amount that went to pay off the prior lien holder. However, under Utah Code 59-12-102 (87) “purchase price” means the total amount of consideration paid for the vehicle. The facts establish a purchase price for the vehicle of \$\$\$\$\$.

However, the burden switches to the Division regarding the fraud penalty as §59-1-1417(1) provides that the burden is on the Commission to show that a petitioner committed fraud with intent to evade a tax, fee or charge. In this matter the Taxpayer’s argument was that they really did not know what should have been included in “purchase price” and therefore, they could not have had the “intent” to evade. The Taxpayer had filled out the registration form by writing in \$\$\$\$\$ as the purchase price. The Taxpayer and her spouse knew that \$\$\$\$\$ had been transferred for the vehicle. They also acknowledge that there was no separate \$\$\$\$\$ payment. Their claim that they considered the \$\$\$\$\$ paid directly to the sellers to be a “gift” and not part of the purchase price, is not only disingenuous, it is fraud. They knew claiming \$\$\$\$\$ as the sale price on their registration form would result in lower taxes. They committed fraud with intent to evade the tax and the fraud penalty is supported in this matter.

CONCLUSIONS OF LAW

1. A taxpayer has the burden of proof to show that the tax deficiency set out in an audit is incorrect under Utah Code §59-1-1417. In this case the Taxpayer had no evidence to show that the purchase price or consideration paid for the vehicle at issue was something less than \$\$\$\$\$. Under Utah Code 59-12-102 (87) “purchase price” means the total amount of consideration paid for the vehicle. The sales tax amount based on the \$\$\$\$\$ purchase price should be upheld.

2. In this matter, the burden of proof is on the Division regarding the fraud penalty. *See* Utah Code §59-1-1417(1). A fraud penalty is imposed under §59-1-401(7) when a taxpayer has committed fraud with intent to evade a tax, fee or charge. The Taxpayer in this matter purchased a vehicle for \$\$\$\$\$. She signed a registration form that stated the purchase price had been \$\$\$\$\$. She knew this would result in a lower sales tax. The Division has met its burden and the penalty is supported.

Upon review of the evidence submitted in this matter and the applicable law, the revised audit amount should be sustained.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the revised Audit deficiency of tax, penalty and interest. It is so ordered.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.