APPEAL # 12-2871
TAX TYPE: SALES TAX
TAX YEAR: 2009-2012
DATE SIGNED: 05/05/2014
COMMISSIONERS: R.JOHNSON, M.CRAGUN, R.PERO
EXCUSED/RECUSED: D.PIGANANELLI

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER / TAXPAYER, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING DECISION** Appeal No. 12-2871 Tax Type: Audit – Sales Tax Tax Period: 7/1/09 – 6/30/12 Account No.: ##### Judge: Jensen

Presiding:
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner:	PETITIONER'S REP-1, for the Taxpayer
	PETITIONER'S REP-2, for the Taxpayer
	PETITIONER'S REP-3, for the Taxpayer
For Respondent:	RESPONDENT'S REP-1, Assistant Attorney General
	RESPONDENT'S REP-2, for the Division
	RESPONDENT'S REP-3, for the Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (the "Taxpayer") is appealing an audit by Respondent (the "Division") imposing sales tax on purchases of automobiles between DATE and DATE (the "Audit Period"). On DATE, the Division issued a Utah Tax Audit Report finding that the Taxpayer had unpaid sales and use tax of $$$$$ and interest, as of the date of the Report, of $$$$$.[1] The Taxpayer timely appealed the Division's findings and the case proceeded to the Initial Hearing.

[1] Interest continues to accrue on any unpaid balance.

APPLICABLE LAW[2]

Utah Code Ann. §59-12-103(1)(a) imposes a sales and use tax on the purchaser for "retail sales of tangible personal property made within the state."

Utah Code Ann. §59-12-102(102) defines "retail sale" as "a sale, lease, or rental for a purpose other than: (a) resale; (b) sublease; or (c) subrent."

Utah Code Ann. §59-12-104 provides for exemptions from sales tax for certain transactions as follows, in pertinent part:

> (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of this state if the vehicle is:
> (a) not registered in this state; and
> (b) (i) not used in this state; or
> (ii) used in this state:
> (A) if the vehicle is not used to conduct business, for a time period that does not exceed the longer of:
> (I) 30 days in any calendar year; or
> (II) the time period necessary to transport the vehicle to the borders of this state; or
> (B) if the vehicle is used to conduct business, for the time period necessary to transport the vehicle to the borders of this state;
> . . .
>
> (25) a product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

Utah Code Ann. §41-1a-501, requires a certificate of title upon the purchase of a motor vehicle as follows:

> Unless exempted, each owner of a motor vehicle, vessel, outboard motor, trailer, semitrailer, manufactured home, mobile home, or off-highway vehicle shall apply to the division for a certificate of title on forms furnished by the division as evidence of ownership.

Utah Code Ann. §59-12-107(2) and (3) require that a Utah business, including an automobile dealership, collect sales tax on sales within the state.

Utah Code Ann. §59-12-107(7) requires payment of sales tax directly to the Commission on a vehicle from someone other than a licensed vehicle dealer as follows in pertinent part:

> (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 (4)(a) when the vehicle is titled or registered.

[2] Some of the cited code sections changed numbering during the Audit Period. These changes are not relevant to the outcome of this case. Unless noted otherwise, the Commission cites the 2012 version of Utah code.

Utah Code Ann. §41-1a-201 provides that [u]nless exempted, a person may not operate and an owner may not give another person permission to operate a motor vehicle, combination of vehicles, trailer, semitrailer, vintage vehicle, off-highway vehicle, or vessel in this state unless it has been registered.

Interest on any underpayment, deficiency, or delinquency of any tax or fee 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 Code Ann. §59-1-1417 provides guidance regarding both burden of proof and statutory construction in matters before the Tax Commission 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.
>
> (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.

Utah Code Ann. §41-3-201(2)(a) provides that a person may not act as a "dealer" without having a license procured by the Tax Commission.

For purposes of Utah Code Ann. §41-3-201(2)(a), Utah Code Ann. §41-3-102(8) defines "dealer" as follows:

> (a) "Dealer" means a person:
>
> (i) whose business in whole or in part involves selling new, used, or new and used motor vehicles or off-highway vehicles; and
>
> (ii) who sells, displays for sale, or offers for sale or exchange three or more new or used motor vehicles or off-highway vehicles in any 12-month period.
>
> (b) "Dealer" includes a representative or consignee of any dealer.

DISCUSSION

The Taxpayer holds a sales tax license but is not licensed as an automobile dealer. In the Audit Period, the Taxpayer used its sales tax license to purchase twelve motor vehicles and one truck camper cover without paying sales tax as follows:

REDATED TABLE

The Taxpayer argues that it should not have to pay sales tax on its purchases of these items because they were for resale outside the state of Utah. Specifically, the Taxpayer shipped the vehicles to locations in COUNTRY-1. The Taxpayer installed the camper top on one of the vehicles before shipping it. The Taxpayer purchased the vehicles as new cars, trucks, and SUVs**.** The manufacturers of the vehicles shipped them to Utah auto dealerships with a Manufacturer's Statement of Origin. The Taxpayer purchased the vehicles and titled them in Utah in the Taxpayer's name before shipping them to COUNTRY-1. Generally, the Taxpayer drove the vehicles only to a location where they could be loaded on to a transport truck to be taken to a seaport for shipping to COUNTRY-1. For some of the vehicles, the Taxpayer did not drive them at all because auto transport companies picked up the vehicles from the new vehicle dealers.

At the initial hearing, the parties discussed the Taxpayer's titling of the vehicles. The Division's representatives asserted they had determined that there were advantages to the Taxpayer to title the vehicles before sending them to COUNTRY-1 because of the way the COUNTRY-1 government treated the vehicles upon reaching their final destinations in COUNTRY-1. The Taxpayer did not dispute these assertions and, to some extent, supported them by explaining that the Taxpayer had to give a certificate of title to the COUNTRY-1 government to show proof of ownership.

For all types of tangible personal property, including motor vehicles, Utah Code Ann. §59-12-103(1)(a) imposes a sales and use tax on the purchaser for "retail sales of tangible personal property made within the state." Utah Code Ann. §59-12-102(102) defines "retail sale" as "a sale, lease, or rental for a purpose other than: (a) resale; (b) sublease; or (c) subrent."

Because Utah Code Ann. §59-12-103 imposes a tax, in this case a sales or use tax, it is an imposition statute. At least two legal consequences flow from the status of Utah Code Ann. §59-12-103 as an imposition statute. First, imposition statutes are construed against imposition of tax and in favor of taxpayers. Utah Code Ann. §59-1-1417(2)(a) provides that "the commission or a court considering a case involving the tax, fee, or charge shall . . . construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer." For statutes providing exemptions or credits, Utah Code Ann. §59-1-1417(2)(b) requires that the Commission or courts deciding state tax cases to "construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer."

Second, if a transaction does not come under a Utah statutory provision imposing a tax, there is no reason to consider exemption statutes. It is necessary to first impose a tax before there is a need to consider an exemption from that tax. Utah law provides that transactions that qualify for exemptions are "exempt from the taxes *imposed by*" the sales and use tax chapter. Utah Code Ann. §59-12-104 (emphasis added).

Because it is first necessary to determine whether a Utah statute imposes a tax before considering exemptions from that tax, the Commission first considers whether sales of vehicles and related equipment to the Taxpayer were "retail sales" as defined by Utah Code Ann. §59-12-102(102). If they are not "retail sales" Utah Code Ann. §59-12-103 does not impose a sales or use tax on the transactions. Utah Code Ann. §59-12-102(102) defines "retail sale" as "a sale, lease, or rental for a purpose other than: (a) resale; (b) sublease; or (c) subrent."

The Commission has had occasion to consider the sale of a vehicle purchased in the state for resale. In Tax Commission Case No. 08-2168[3], the Commission considered the purchase of a car by one family member for resale to another family member. The family member purchasing the car for resale purchased the car from an employer that would only sell the car to one of its employees. The family member first purchasing the car sold the car two days later with two additional miles on the odometer, and never registered the car. The second family member purchased the car and paid Utah sales tax on the car. The Commission found that the purchase by the first family member was not a "retail sale" subject to sales tax under Utah Code Ann. §59-12-103(1) because the only purpose of the first family member buying the car was for resale.

The facts in this case are similar to those in Case No. 08-2168. There is no evidence or allegation that the Taxpayer purchased vehicles for its own use. The Taxpayer provided evidence that it purchased the vehicles and equipment at issue for the sole purpose of reselling them. Because the Taxpayer's sole purpose was to buy goods for resale, none of the sales at issue in this case can be said to be "a sale . . . for a purpose other than . . . resale" as would be required to meet the definition of a retail sale. For this reason, they do not come within Utah Code Ann. §59-12-103 and there is no imposition of a sales or use tax under this Section.

Because the facts of this case do not bring the transactions at issue within a tax imposition statute, there is no need to consider whether a separate exemption statute applies. For that reason, the Commission will not address arguments under Utah Code Ann. §59-12-104 and specifically makes no ruling on issues that are not before the Commission under this case. Similarly, the Commission expresses

[3] This decision and many other prior Tax Commission decisions are available for review at tax.utah.gov/commission-office/decisions.

no opinion and makes no ruling on matters of international trade, tariffs, import or export laws since enforcement of these laws is not within the purview of the Utah State Tax Commission.

While the Commission makes no rulings regarding international commerce, import, or export laws, it does note that motor vehicle commerce is an area that the Commission, through its Motor Vehicle Enforcement Division, is required to oversee. Because the Commission is required to review matters of vehicle commerce within the state, it will ask that its Motor Vehicle Enforcement Division consider whether the Taxpayer is required to comply with any provisions of the Motor Vehicle Business Regulations Act, Utah Code Ann §41-3-1 et seq.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Commission reverses the Division's audit assessment of sales tax and interest. 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 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

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner