

20-535

TAX TYPE: SALES & USE TAX

TAX YEAR: 2018

DATE SIGNED: 6/08/2021

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

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<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><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No.     20-535</p> <p>Tax Type:       Audit – Sales and Use Tax</p> <p>Tax Year:        2018</p> <p>Account No.:    #####</p> <p>Judge:           Jensen</p>
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**Presiding:**

John L. Valentine, Commission Chair  
Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner:           TAXPAYER, Taxpayer  
For Respondent:         REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General  
RESPONDENT: for the Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 18, 2021.

Based on the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1.     In July 2018, the Taxpayer purchased a VEHICLE-1 (the “VEHICLE-1”) from a private seller.
2.     The seller was a Utah company that had owned the VEHICLE-1 for its own use.
3.     The seller was not a licensed automobile dealer.
4.     The Taxpayer was purchasing the VEHICLE-1 for his own use.
5.     The Taxpayer was not a licensed automobile dealer.

6. The company that sold the VEHICLE-1 to the Taxpayer provided a signed title to the Taxpayer at the time of purchase.

7. The Taxpayer testified that right after he purchased the VEHICLE-1, he replaced its brakes and tires. He was not sure about the cost of these repairs, but his best guess was that they had cost just over \$\$\$\$\$.

8. The Taxpayer testified that he drove the VEHICLE-1 from the seller's place of business in CITY-1, Utah to his home in the NAME OF AREA. He testified that he also drove the VEHICLE-1 to two repair facilities in CITY-1, Utah for the previously noted brake and tire work.

9. The Taxpayer testified that he could not remember the price he paid for the VEHICLE-1, but estimated that it must have been around \$\$\$\$\$ because he thought he remembered selling the VEHICLE-1 for \$\$\$\$\$ after putting brakes and new tires on it.

10. As part of its investigation into this matter, the Division sent a blank bill of sale to the company that had sold the VEHICLE-1 to the Taxpayer and asked the seller to declare the price for which it sold the VEHICLE-1. The seller listed a sale price of \$\$\$\$\$ and returned the bill of sale to the Division.

11. The Taxpayer testified that within two days of purchasing the VEHICLE-1, but after he had completed the brake and tire work, he found a different vehicle that he liked better than the VEHICLE-1.

12. The Taxpayer determined that he would re-sell the VEHICLE-1 so that he could buy the vehicle that he liked better.

13. The Taxpayer testified that he listed the VEHICLE-1 for sale and found a buyer by placing an online advertisement.

14. A buyer in CITY-2, Utah agreed to buy the VEHICLE-1 in DATE 2018. The buyer immediately took possession of the VEHICLE-1 after he purchased it.

15. The Taxpayer testified that he could not remember the exact dates when he purchased the VEHICLE-1 or when he sold it. He estimated the time between the purchase and sale to be approximately one week.

16. The Taxpayer testified that he did not know the mileage of the VEHICLE-1 at the time he purchased it or at the time he sold it. He estimated that he put approximately 10 miles on the VEHICLE-1 during the time he owned it.

17. At the time that the Taxpayer sold the VEHICLE-1, he was still in possession of a signed title from the company that sold the VEHICLE-1 to him. He testified that he did not take the title to the DMV or otherwise take steps to title or register the VEHICLE-1 in his name.

18. Because the Taxpayer had not obtained a title or registration for the VEHICLE-1 in his own name, he sold the VEHICLE-1 using the title he received from the company that sold the VEHICLE-1 to him. He filled out a portion of the title under "Reassignment of Title," in which he listed himself as seller and the CITY-2 resident as buyer.

19. The Taxpayer testified that he sold the VEHICLE-1 to the CITY-2 resident for \$\$\$\$\$ so that he could recoup some of the costs he had incurred replacing brakes and tires on the VEHICLE-1.

20. The Division obtained a copy of the documentation for the loan that the CITY-2 resident obtained to purchase the VEHICLE-1. These documents indicated that the CITY-2 resident had borrowed \$\$\$\$\$ to purchase the VEHICLE-1.

21. After reviewing the \$\$\$\$\$ loan documentation and comparing it to his recollection of a \$\$\$\$\$ sale price, the Taxpayer testified that he was still reasonably certain that \$\$\$\$\$ was the price for which he sold the VEHICLE-1 to the CITY-2 resident. The Taxpayer was unsure why the CITY-2 resident would have borrowed \$\$\$\$\$ for a \$\$\$\$\$ purchase.

22. The Division audited the transaction in which the Taxpayer purchased the VEHICLE-1 and determined that the Taxpayer was liable for sales and use tax on a transaction in which the Taxpayer purchased the VEHICLE-1 from a Utah company for \$\$\$\$\$.

23. The Taxpayer timely appealed the Division's findings and the case proceeded to a Formal Hearing.

24. The Taxpayer argued that he should not have to pay sales and use tax on a vehicle that he owned for only one week.

25. The Taxpayer pointed out that the CITY-2 buyer, a Utah resident, had to pay sales and use tax when he registered the VEHICLE-1 after he purchased it.

APPLICABLE LAW<sup>1</sup>

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. §59-12-103(1)(l) imposes a sales and use tax on the purchaser 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 provides additional information regarding the nature of tax imposed under Utah Code Ann. §59-12-103 as follows:

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

Utah Code Ann. §59-12-102(109) defines "retail sale" as "a sale, lease, or rental for a purpose other than: (a) resale; (b) sublease; or (c) subrent."

Utah Code Ann. §59-12-102(116) defines "[s]eller" as "a person that makes a sale, lease, or rental of: (a) tangible personal property; (b) a product transferred electronically; or (c) a service."

Utah Code Ann. §59-12-102(136) defines "[u]se" as follows:

(a) "Use" means the exercise of any right or power over tangible personal property, a product transferred electronically, or a service under Subsection 59-12-103(1), incident to

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<sup>1</sup> Unless noted otherwise, the Commission cites the 2018 version of Utah Code.

the ownership or the leasing of that tangible personal property, product transferred electronically, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of tangible personal property, a product transferred electronically, or a service in the regular course of business and held for resale.

Utah Code Ann. §59-12-104 provides for exemptions from sales and use 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;

...

(13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property . . . by a person . . . not regularly engaged in the business of selling that type of tangible personal property . . .

(b) this Subsection (13) does not apply if . . . the sale is of a vehicle or vessel required to be titled or registered under the laws 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. §59-12-107(7) requires payment of sales or use 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 (7)(a) when the vehicle is titled or registered.

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 . . . .”

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. §41-3-201(2)(a) provides that a person may not act as a “dealer” without having procured a license issued by the Motor Vehicle Enforcement Administrator.

Utah Code Ann. §41-3-102(9) 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.

Utah Code Ann. §41-1a-701(1) governs vehicle registrations following the sale of a vehicle as follows:

- (1) If the owner of a registered vehicle transfers his title or interest to the vehicle the registration of the vehicle expires. The owner shall remove the license plates from the transferred vehicle.

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.

### CONCLUSIONS OF LAW

#### **Statutory Interpretation and Determination of “Retail Sale”**

The parties agree that 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.” They agree that Utah Code Ann. §59-12-102(109) defines “retail sale” as “a sale, lease, or rental for a purpose other than: (a) resale; (b) sublease; or (c) subrent.” At this point, the parties differ. The Taxpayer’s position is that because he resold the VEHICLE-1, his purchase was not a “sale . . . for a purpose other than . . . resale” under Utah Code Ann. §59-12-102(109)(a). The Division’s position is that the transaction in which the Taxpayer purchased the vehicle was a sale “for a purpose other than . . . resale.”

The Utah Sales and Use Tax Act, Utah Code Ann. §59-12-101 *et. seq.*, (“the Act”) does not directly define a “sale for resale.” Utah Code Ann. §59-12-102, the main definition portion of the Act, is silent with regard to defining “sale for resale” or “resale.” However, a later section of the Act relating to exemptions, Utah Code Ann. §59-12-104(25), provides additional information regarding sales for resale by exempting from sales and use tax “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.” The lack of a direct definition for resale in one part of the Act requires the Commission to look to accepted principles of statutory construction.

When interpreting statutes, Utah courts are to “read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters.” *Miller*

*v. Weaver*, 2003 UT 12, ¶17, 66 P.3d 592. Under this principle of statutory construction, there is good cause for the Commission to harmonize the use of the term “resale” in Utah Code Ann. §59-12-102(109)(a) with the use of the same word in the same chapter in Utah Code Ann. §59-12-104(25). This subsection provides an exemption for sales of “a product purchased for resale in this state. . . in the regular course of business.”

In this case, it is clear that the Taxpayer did not purchase a vehicle for resale in the regular course of his business. To have a regular course of business of buying and selling motor vehicles would require automobile dealer licensing under Utah Code Ann. §41-3-201(2). The Taxpayer did not hold an automobile dealer’s license. Because the sale at issue in this case is not an exempt sale for resale, Utah Code Ann. §59-12-103(1)(a) imposes a sales and use tax on the Taxpayer as a purchaser in a “retail sale of tangible personal property made within the state.”

As for the Taxpayer’s purchase price of the VEHICLE-1, the \$\$\$\$ declaration on a bill of sale by a representative of the company that sold the VEHICLE-1 to the Taxpayer is more persuasive than the Taxpayer’s recollections about the amount the Taxpayer paid for the VEHICLE-1. There is good cause to find that the Taxpayer’s purchase price of the VEHICLE-1 was \$\$\$\$.

**Possible Exemption under Utah Code Ann. §59-12-104(9)**

At the Formal Hearing for this case, the parties discussed possible exemptions such as Utah Code Ann. §59-12-104(9), which provides for an exemption for certain transactions as follows:

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;

Applying Utah Code Ann. §59-12-104(9), the Commission notes that there were two transactions present under the facts of this case. As separate transactions, each could be subject to sales and use tax. *See* Utah Administrative Rule R865-19S-2 (providing that “sales and use taxes are transaction taxes” and that sales and use tax “is not upon the articles sold or furnished, but upon the transaction”). The first transaction is from a Utah company as seller to the Taxpayer as buyer. The second transaction is from the Taxpayer as seller to a CITY-2 resident as a separate buyer. The parties agree that the second transaction was a taxable transaction and that the buyer in that transaction, a CITY-2 resident, paid sales and use tax upon titling and registering the VEHICLE-1. Inasmuch as the second transaction is not at issue in this case, the Commission will not further consider it except as necessary to determine timing and use under the first transaction.

Focusing on the first transaction, the parties agree that this was a transaction in which the Taxpayer purchased the VEHICLE-1 from a Utah company. One of the requirements for exemption of this transaction under Utah Code Ann. §59-12-104(9) is that the vehicle must be “not used in this state” or, if “used in this state” the use must qualify under additional requirements for type and duration of use. The Taxpayer used the VEHICLE-1 by driving it approximately 10 miles in approximately one week. He also used it by exercising a “right or power over tangible personal property . . . incident to the ownership or the leasing of that tangible personal property” as provided in Utah Code Ann. §59-12-102(136). During the time the Taxpayer was using the VEHICLE-1 by driving it on Utah highways, he had not titled or registered the VEHICLE-1 in his name. This would have been a violation of Utah Code Ann. §41-1a-201, which provides that “[u]nless exempted, a person may not operate . . . a motor vehicle . . . in this state unless it has been registered . . . .”

It is an appropriate role for the Commission to interpret an exemption "strictly against the taxpayer" as required by Utah Code Ann. §59-1-1417, and thus to interpret the exemption narrowly and in harmony with other motor vehicle laws. It is clear that under Utah Code Ann. §41-1a-201, a person may not operate a motor vehicle in this state unless it has been registered. It is also clear under Utah Code Ann. §59-12-

107(7) 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 Commission interprets the phrase “used in the state” under the exemption provided in Utah Code Ann. §59-12-104(9) in a manner that harmonizes with other motor vehicle laws. In *Miller v. Weaver*, 2003 UT 12, ¶17, 66 P.3d 592, the Utah Supreme Court explained this principle as follows:

When interpreting a statute, this court looks first to the statute's plain language to determine the Legislature's intent and purpose. *Lovendahl v. Jordan Sch. Dist.*, 2002 UT 130, ¶ 21, 63 P.3d 705. We read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters. *State v. Schofield*, 2002 UT 132, ¶ 8, 63 P.3d 667; *State v. Maestas*, 2002 UT 123, ¶ 54, 63 P.3d 621 (Regarding “whole statute” interpretation, the court stated: “A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole.” (quoting Norman J. Singer, 2A Sutherland, Statutory Construction § 96:05 (4th ed.1984))). We follow “the cardinal rule that the general purpose, intent or purport of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious to its manifest object.” *Faux v. Mickelsen*, 725 P.2d 1372, 1375 (Utah 1986) (quoting Sutherland, supra, § 46.05).

Applying this principle, the Commission notes that although the Sales and Use Tax Act and the Utah Motor Vehicle Act are under different titles and therefore not in the same chapter as described in *Miller*, there is still good cause to harmonize the exemption provisions of Utah Code Ann. §59-12-104(9) with the requirements for legal use of motor vehicles in Utah Code Ann. §41-1a-201. Harmonizing these provisions, the Commission concludes in this case that “used in the state” means a lawful use of a vehicle in this state, which would not include an owner operating an unregistered vehicle in Utah. Under the facts of this case, there is not good cause to find that the Taxpayer is entitled to exemption under Utah Code Ann. §59-12-104(9).

**Possible Exemption Under Utah Code Ann. §§59-12-104(13)(a) and (25).**

The exemption in Utah Code Ann. §59-12-104(13)(a) for “the sale of tangible personal property . . . by a person . . . not regularly engaged in the business of selling that type of tangible personal property” does not apply to the facts of this case. Utah Code Ann. §59-12-104(13)(b) goes on to provide that “this

Subsection (13) does not apply if . . . the sale is of a vehicle or vessel required to be titled or registered under the laws of this state.” As indicated earlier, the VEHICLE-1 is a “vehicle . . . required to be titled or registered under the laws of this state.” For this reason, the exemption in Utah Code Ann. §59-12-104(13) does not apply in this case.

The exemption in Utah Code Ann. §59-12-104(25) does not apply in this case. As previously discussed, Utah Code Ann. §59-12-104(25) applies only to a product purchased for resale in this state “in the regular course of business.” The Taxpayer did not buy then sell the VEHICLE-1 in the regular course of his business.

**Conclusion**

The VEHICLE-1 was subject to titling or registration in the state, regardless of whether the Taxpayer actually registered it in the state. This triggered the requirement to pay sales and use taxes on the transaction under Utah Code Ann. §59-12-107. Furthermore, the transaction from a Utah company to the Taxpayer is a sale of tangible personal property that is not exempt from sales and use taxation nor excluded from the sales and use tax base, so is subject to sales and use taxation even without considering the application of Utah Code Ann. §59-12-107.

**DECISION AND ORDER**

Based on the foregoing, the Commission upholds the Division’s audit assessment of sales and use tax and interest. It is so ordered.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2021.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
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 in accordance with Utah Code Ann. §63G-4-302.

Appeal No. 20-535

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 and 63G-4-401 et. seq.