

APPEAL #24-1942
TAX TYPE: SALES & USE TAX
TAX YEAR: 2021, 2022, 2023 & 2024
DATE SIGNED: 04/07/2026
COMMISSIONER: J. VALENTINE, R. ROCKWELL, J. FRESQUES AND J. DEEDS

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>TAXPAYER,</p> <p>Petitioner,</p> <p>v.</p> <p>BUSINESS TAXES AND DISCOVERY DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p> | <p>INITIAL HEARING ORDER</p> <p>Appeal No. 24-1942</p> <p>Account No: 15330598-004-STC</p> <p>Tax Type: Sales & Use Tax</p> <p>Tax Years: 2021-2024</p> <p>Judge: Phan</p> |
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER’S REP-1, Representative
PETITIONER’S REP-2, Accounting Manager, COMPANY-1
For Respondent: RESPONDENT’S REP-1, Assistant Attorney General
RESPONDENT’S REP-2, Tax Examiner Manager
RESPONDENT’S REP-3, Senior Tax Examiner

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on an appeal filed by Petitioner (“Taxpayer”) pursuant to Utah Code §59-1-501, for an Initial Hearing on October 7, 2025, in accordance with Utah Code §59-1-502.5. The Taxpayer is appealing a Statutory Notice of Sales & Use Tax audit deficiency, issued for the audit period of July 1, 2021 through February 29, 2024 (“Notice”). The Notice was issued by Respondent (“Division”) on MONTH DATE, 2024, and indicated an audit deficiency of \$\$\$\$ in sales and use taxes, restaurant tax, and transient room tax, and interest as of the Notice date in the amount of \$\$\$\$.¹ No penalties were assessed with the audit.

¹ Interest continues to accrue on the unpaid balance.

APPLICABLE LAW

Utah imposes sales and use taxes pursuant to Utah Code §59-12-103(1)(2022)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;
....
 - (i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;
....
 - (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;
....

“Purchase price” and “sales price” are defined at Utah Code §59-12-102(104)(2022) as follows:

- (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.
- (b) "Purchase price" and "sales price" include:
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 - (iii) a charge by the seller for any service necessary to complete the sale;
....

Utah law allows counties and cities to impose a transient room tax at Utah Code Ann. §59-12-301 and §59-12-352. For counties, Utah Code Ann. §59-12-301 provides as follows:

A county legislative body may impose a tax on charges for the accommodations and services described in Subsection 59-12-103(1)(i) at a rate of not to exceed 4.25% beginning on or after October 1, 2006.

The county transient room tax is administered pursuant to Utah Code § 59-12-302 as follows:

- (1) Except as provided in Subsections (2), (3), and (4), the tax authorized under this part shall be administered, collected, and enforced in accordance with:
 - (a) the same procedures used to administer, collect, and enforce the tax under:
 - (i) Part 1, Tax Collection; or
 - (ii) Part 2, Local Sales and Use Tax Act; and
 - (b) Chapter 1, General Taxation Policies.
- (2) The location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

A county is authorized to impose a tax under Utah Code Ann. §59-12-603(1)(a) on the following as provided in pertinent part:

² This decision cites the statutory provisions in effect as of January 1, 2022. Although there were some revisions to the applicable law during the audit period, there were none that would have changed the outcome of this decision.

(iii) a county legislative body of any county may impose a tax of not to exceed 1% of all sales of the following that are sold by a restaurant:

- (A) alcoholic beverages;
- (B) food and food ingredients; or
- (C) prepared food; . . .

The restaurant tax imposed under Utah Code Ann. §59-12-603(1)(a) is administered pursuant to Utah Code Ann. §59-12-603(7)(a) as follows:

(i) Except as provided in Subsection (7)(a)(ii), a tax authorized under this part shall be administered, collected, enforced, and interpreted in accordance with: (A) the same procedures used to administer, collect, enforce, and interpret the tax under: (I) Part 1, Tax Collection; or (II) Part 2, Local Sales and Use Tax Act; and (B) Chapter 1, General Taxation Policies.

The burden of proof and statutory construction 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.

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).

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.”

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.

DISCUSSION

The Taxpayer operates the COMPANY-1, which was one of two lodging operations at the COMPANY-2. The main audit issue, which resulted in most of the tax deficiency, was that the Taxpayer had been charging its guests a service fee with the room charges. The Division concluded in the audit that

the service fee should have been included as part of the sales price or purchase price of the room charges and was subject to sales and use tax and transient room tax. There was an additional restaurant tax deficiency imposed in the audit that was not related to the service fee and was a much smaller tax amount. The audit notice indicated unreported sales and use tax in the amount of \$\$\$\$\$ and unreported transient room tax in the amount of \$\$\$\$\$, but there was a credit posted for a payment in the amount of \$\$\$\$\$. The report indicated \$\$\$\$\$ in unreported restaurant tax. No penalties were assessed with the audit.

I. Taxpayer's Position

The Taxpayer's representatives explained that they had purchased the COMPANY-1 in 2021 and it was the first lodging business that the Taxpayer owned. They stated it was run down at the time of the purchase and they purchased it to fix up and operate as a lodge. The Taxpayer's representatives explained that they had adopted the prior owner's accounting structure, which had charged a fee to the guests labeled "parking concierge fees" and the prior owner had not included the fee in the tax filings. The Taxpayer's representatives did not contest any of the audit deficiencies as far as the facts and the applicable law. At the hearing, the Taxpayer's representatives did not present any documentation or other evidence or any legal argument to support that the fee labeled "parking concierge fees" was not a service fee that was properly subject to sales and use taxes or the transient room tax. They also did not dispute the small amount of restaurant tax and acknowledged some discrepancies in their accounting. Their sole argument and request at the Initial Hearing was that the audit taxes and interest be forgiven because they did not know the service fee they were charging was subject to tax, they did not collect tax on the fee, and it would now be a financial hardship to pay the tax. The Taxpayer's representatives cited no statute or case law that supported their position that a statutorily imposed tax could be abated on the basis of either ignorance of the law or financial hardship in an audit deficiency appeal proceeding.

II. Division's Position

At the hearing the Division's auditor explained that when looking through the Taxpayer's records he determined that the Taxpayer was charging a hotel service fee in connection with the overnight accommodations and that fee should have been included in the tax base. The Division said the fee being charged was similar to a "resort fee." The auditor concluded that the Taxpayer had been including the fee in the Taxpayer's income statements, but not reporting the fee on the sales and use tax returns or as part of the transient room tax returns. These amounts were shown on Schedule 1 and Schedule 3 of the Notice. The Division stated at the hearing that the tax imposed on the resort fee was lawfully imposed pursuant to Utah Code Ann. §59-12-103(1)(i) and 59-12-301. The Division noted that the tax is imposed on the purchase price or sales price and "purchase price" and "sales price" are defined at Utah Code §59-12-102(104) to include "a charge by the seller for any service necessary to complete the sale." The

Division also cited Utah Code Ann. §59-12-603(1), which imposes the restaurant tax. The Division noted that the Taxpayer did not present any evidence or even argue that the audit amount relating to the restaurant tax was in error.

The Division's representative pointed out that the Taxpayer has the burden of proof in this proceeding, citing Utah Code Ann. §59-1-1417 and that the Taxpayer had not provided any evidence or documentation to support that the audit was incorrect. The Division's representative noted that there is no legal or statutory basis for the Commission to forgive or abate this audit deficiency.

The Division's representatives also explained why the Division chose not to assess any penalties with the audit. The Division's representative explained that they understood that the Taxpayer had just acquired the business prior to the audit period and so they considered the Taxpayer to be a new business. The Division concluded that they were filing the returns in the same manner as the prior owner and they felt that it was just an oversight that they were not charging or collecting the sales and transient room tax on the service fee. They also felt that the Taxpayer was cooperative when they audited the Taxpayer.

Interest was, however, imposed with the audit. The Division's representatives stated that interest is imposed based on the statutory provisions and although the Tax Commission may waive interest upon a finding of reasonable cause pursuant to Utah Code Ann. §59-1-401, Utah Administrative Rule R861-1A-42(2) sets out that reasonable cause for waiver of interest is limited to situations where the taxpayer proves that the Tax Commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error. The Division pointed out that the Taxpayer did not make this type of showing.

III. Commission Conclusion

After reviewing the information and arguments proffered by the parties and the applicable law, the Commission first considers that it is the Taxpayer who has the burden of proof in this proceeding pursuant to Utah Code §59-1-1417. The Taxpayer did not provide documentation or even argue that the audit deficiency was incorrectly imposed. As the Division stated at the hearing, “a charge by the seller for any service necessary to complete the sale” is part of the purchase price or sales price pursuant to Utah Code §59-12-102(104). Both the sales and use tax and the transient room tax are imposed on the “purchase price or sales price.” See Utah Code §59-12-103(1)(2022), §59-12-302, and §59-12-354. Therefore, based on the evidence and arguments presented, the audit deficiency was properly imposed and there is no basis upon which the Taxpayer has shown it to be incorrect. The restaurant tax deficiency was not contested.

The Taxpayer did not dispute the statutory provisions or the Division's computation of the tax but argued the tax amount should be forgiven based on ignorance of the law and financial hardship. There is

no legal basis for the Tax Commission to abate an audit deficiency on the grounds of ignorance of the law or financial hardship. Once the audit deficiency is assessed, after the appeal is closed, the Taxpayer may contact the Special Services Division about the Taxpayer's financial hardship and set up a payment plan. The Auditing Division did not assess audit penalties. Interest was imposed pursuant to Utah Code Ann. §59-1-402(5). Although the Tax Commission may waive or reduce interest pursuant to Utah Code Ann. §59-1-401 upon reasonable cause being shown, reasonable cause for waiver of interest is limited to circumstances where the taxpayer proves "that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error" under Utah Administrative Rule R861-1A-42(2). There is no basis for waiver or reduction of interest.

The audit deficiency of sales and use tax, transient room tax, and restaurant tax, along with the interest that has accrued thereon should be upheld.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's audit deficiency of sales and use tax, transient room tax, restaurant tax and the interest accruing thereon for the period of July 1, 2021 through February 29, 2024. The Taxpayer's appeal is denied. 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 ____, 2026.

John L. Valentine
Commission Chair

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

John T. Deeds
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.