

# **2012 Utah Taxes Now Conference**

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## **SB 27: REFUNDING ERRONEOUSLY PAID SALES TAXES**

**Commissioner Marc B. Johnson**  
**David J. Crapo**

**BACKGROUND:** Pursuant to Utah Code Ann. § 59-12-102(87)(c)(ii)(B), delivery charges are not taxable under Utah law so long as the delivery charge is separately stated on an invoice, bill of sale, or similar document.

***Taxpayer's Position*** – Ivory Homes paid sales tax on delivery charges associated with purchases of concrete because the seller did not separately itemize delivery charges on its invoices. The seller internally tracked delivery charges separate from concrete charges, and at Ivory Homes request began listing delivery charges as a line item on its invoice. This corrected the problem going forward, but did not solve the issue of Ivory Homes having paid sales tax on delivery charges in the past. Therefore, Ivory Homes filed for a refund using corrected invoices which detailed the delivery charge. The refund was denied and Ivory Homes appealed to the Utah Supreme Court.

***Tax Commission Position*** – Ivory Homes, through its contracted agent, contacted the seller and requested a calculation of what delivery charges would have been allocated for each transaction. The evidence presented to the Commission was a spreadsheet indicating the proposed allocation for each transaction. The Commission held that this was insufficient to meet the statutory requirement for the delivery charges to be stated on an invoice.

**ISSUE:** The issue before the Utah Supreme Court was whether it is appropriate to use corrected invoices based on information that the seller keeps in its books and records in the ordinary course of business to obtain a refund of erroneously paid sales tax.

**DECISION:** *Ivory Homes v. Utah State Tax Comm'n*, 2011 UT 54, 266 P.3d 751 (Sept. 27, 2011). The Court did not directly answer the above stated issue, but upheld the Tax Commission's finding that the parties' intent was that delivery charges were included in the original transaction, ruling that Ivory Homes was not entitled to a refund. The Court made the following three holdings: (1) there was no delivery charge in the original transaction, thereby effectively disallowing corrective changes on the spreadsheet to be used invoices; (2) a sales tax refund may only be granted if the Commission committed an error; and (3) refund statutes are to be narrowly construed against taxpayers.

**CONCERNS:** The decision by the Utah Supreme Court created numerous concerns for Utah taxpayers, all of which relate to the three central holdings. These concerns consist of:

- 1) the court's ruling appears to prevent a taxpayer from correcting erroneously paid sales taxes under the circumstances argued by the Tax Commission;

- 2) the Court's ruling essentially eliminates sales tax refunds as there can be no Commission error because the Commission is not involved in the process of collecting sales tax, rather it is collected by vendors (sellers) and remitted to the Commission; and
- 3) the Court's ruling is contrary to established case law that taxing statutes are to be narrowly construed against the taxing entity.

**LEGISLATIVE RESOLUTIONS:** SB 27 reversed the Utah Supreme Court's ruling and resolves the three concerns listed above.

- 1) The bill amends the definition of delivery charge and allows for corrected invoices to be used at the time of the sale or later to correct the transaction (*see* sections 4 & 5 of the bill).
- 2) The bill provides that a refund may be granted if the error is committed by a party other than the Commission (*see* section 2 of the bill).
- 3) The bill codifies standard case law that taxing statutes are to be construed strictly in favor of the taxpayer (*see* section 3 of the bill).

The Tax Commission has some concerns with the bill:

- 1) The original language provided for delivery charges to be supported only by a seller's books and records. The Commission felt that this provision was not consistent with traditional definitions of a sale.
- 2) The enrolled bill includes additional requirements for support by a preponderance of evidence and the agreement of all parties. This change ameliorated a good deal of the Commission's concern.

**EFFECTIVE DATE:**

- 1) Sections 2, 3, and 6 of the bill went into effect on May 8, 2012 and apply to refund requests pending on, or filed on or after September 27, 2011 (the date of the Utah Supreme Court's decision).
- 2) Sections 4 and 5 of the bill go into effect on July 1, 2014 and apply to refund requests pending on, or filed on or after January 1, 2012.