

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination of)	DOCKET NO. 14503
)	
[REDACTED],)	DECISION
)	
Petitioner.)	
_____)	

On January 18, 2000, the Tax Enforcement Section of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The Notice proposed additional use tax, related penalty, and interest in the total amount of \$325, for the period of September, 1997. The taxpayer timely protested and requested a redetermination on March 16, 2000. An informal conference was held on June 19, 2001. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

The taxpayer purchased a used snowmobile from another individual in September 1997 for \$4,500. The snowmobile was purchased in Idaho, and the taxpayer resides in Idaho. No sales or use tax was paid on the purchase of the snowmobile. The Tax Enforcement Section asserts the taxpayer should pay a use tax on his use of the snowmobile. The claimed tax is equal to five percent of the purchase price of the snowmobile. Additionally, the Tax Enforcement Bureau asserted the taxpayer owed penalty and interest.

Idaho Code § 63-3621 imposes a five percent (5%) tax on the storage, use, or other consumption of tangible personal property measured on the value of the property. The statute further states that a recent sales price shall be presumptive evidence of the value of the property. The term “use” is defined in Idaho Code § 63-3615(b) to include the exercise of any right or power over tangible personal property incident to the ownership of that property. Here, the taxpayer purchased the snowmobile for \$4,500 and then used it within the meaning of section

63-3615(b). Accordingly, the Tax Enforcement Bureau issued the Notice of Deficiency asserting tax due of five percent of \$4,500.

The taxpayer, however, contends the use tax does not apply to him because he is not acting under a privilege allowed by the state. Essentially, he contends the tax can only be imposed on individuals, corporations, and other businesses which are licensed by the state. Here, the taxpayer bought the snowmobile from another unlicensed individual, and therefore the scope of the use tax does not apply to this transaction.

However, the plain reading of the relevant statutes contradicts the taxpayer's arguments. Section 63-3621(a) states that every person using or otherwise consuming in this state tangible personal property is liable for the use tax. "Person" is defined in Idaho Code § 63-3607 to include ". . . any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit." (Emphasis added). Here, the taxpayer is an individual and he is consuming tangible personal property. Accordingly, the statutes do require the taxpayer to pay the use tax.

The taxpayer though argues that the use tax cannot be imposed when the article to be stored, used or consumed is conveyed or used by an entity acting under a right and not a privilege. In other words, only privileges, and not rights, can be taxed. For example, the taxpayer contends that produce grown in a home garden and sold to a neighbor cannot be subjected to an excise tax, like the use tax. This limitation on this power to tax, according to the taxpayer, is the common law which protects the unalienable rights of natural persons. The taxpayer cites *Jack Cole v. MacFarland*, 337 S.W.2d 453 (Tenn. 1960), and *Redfield v. Fisher*,

292 P. 813 (Or. 1930) in support of his position. Neither of these cases stand for the proposition for which the taxpayer relies.

The Tennessee Constitution gives the state legislature the authority “to tax merchants, peddlers, and privileges, in such manner as they may from time to time direct.” Tenn. Const. Art. II, § 28. However, the Constitution does not define the term “privilege,” leaving it for the Tennessee Courts to determine whether a taxing scheme is constitutional. In *Jack Cole*, the Tennessee Supreme Court determined the income tax at issue was not a tax on a privilege and therefore could not be imposed. Thus, in Tennessee, any discussion of whether something can be taxed as a privilege is rooted in the State Constitution and not the common law. That aside, *Jack Cole* addresses a different type of tax—an income tax—than is at issue here—a use tax. Unfortunately, for the taxpayer, the Tennessee Supreme Court has held use taxes are privilege taxes and are imposed upon the privilege of using, consuming or storing tangible personal property. *Madison Suburban Utility District of Davidson County v. Carson*, 232 S.W.2d 277 (Tenn. 1950).

Likewise, *Redfield v. Fisher*, 292 P. 813 (Or. 1930) is not applicable. The issue, was whether an income tax imposed upon the gross income of intangible property was in fact a tax on property, and, if so, whether such a tax violated the uniformity provisions of the Oregon Constitution. The case does not stand for the proposition that a government cannot impose a use tax upon an individual’s exercise of right or power over tangible personal property. To the extent *Redfield* is relevant, it has been distinguished by the Idaho Supreme Court in *Diefendorf v. Gallet*, 51 Idaho 619, 10P.2d 307 (1932). There, the Court held that the Idaho income tax was not a tax on property, and therefore the Idaho Constitution’s uniformity provisions were not implicated. In fact, the Idaho Supreme Court has held the state sales tax law does not violate the

uniformity provision of Art. VII, § 5, because the uniform tax requirements apply to ad valorem taxes and not to an excise tax such as sales and use taxes. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

The taxpayer's arguments, while novel, are not supported by the statutes nor the cases he has cited. Idaho Code § 63-3621 does impose a use tax on any consumption or use of tangible personal property. However, the legislature has granted an exemption for some transactions between individuals. Idaho Code § 63-3622K, the occasional sale exemption, exempts from sales and use taxes most sales made by someone other than a retailer. Idaho Code § 63-3622K(b)(1). A retailer is someone who makes more than two retail sales of tangible personal property within any twelve month period. Idaho Code § 63-3610(c). Thus, most sales by one individual to another would be treated as an occasional sale. However, the sale, purchase, or use of snowmobiles are expressly excluded from the occasional sale exemption. Idaho Code § 63-3622K(d). Accordingly, the Tax Enforcement Bureau's decision to impose a use tax on the taxpayer's use of the snowmobile is correct.

THEREFORE, the Notice of Deficiency Determination dated January 18, 2000, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest for the period of September 1997:

<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
\$225	\$56	\$71	\$352

Interest is computed through September 30, 2001 and will accrue at \$0.05 per day until paid in full.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2001, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED] Receipt No. [Redacted]
[REDACTED][REDACTED]

ADMINISTRATIVE ASSISTANT 1