

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 14993
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On February 10, 2000, staff of the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (Mr. [Redacted]), proposing additional use taxes, penalty and interest for the period December 1997 in the total amount of \$5,687.

On April 12, 2000, a timely protest and petition for redetermination was filed by Mr. [Redacted]. Neither a formal hearing nor an informal conference has been requested by Mr. [Redacted]. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the deficiency determination.

Mr. [Redacted] purchased a 1997 Porsche with a vehicle identification number (VIN) of [REDACTED] on or about October 18, 1996. Subsequently, on or about January 15, 1997, Mr. [Redacted] titled/registered this vehicle in Oregon under the name [Redacted] or [Redacted]. Mr. [Redacted] Porsche was reported on numerous occasions as being present in the state of Idaho.

Mr. [Redacted] received a homeowner's exemption on his home at [Redacted] in the [Redacted] Subdivision in [Redacted] Idaho for the years 1996, 1997, 1998, and 1999. Idaho Code § 63-105DD provides that such exemptions may be granted only if the residence is owner occupied and used as the owner's primary dwelling place.

Mr. [Redacted] registered to vote in Idaho on November 5, 1996 and voted in the General Election in Idaho in 1996.

Mr. [Redacted] acquired an Idaho driver's license on January 2, 1996.

Mr. [Redacted] filed full year Idaho Resident income tax returns for the years 1991 through 1996.

Based on the information listed in the previous paragraphs, Mr. [Redacted] appeared to be an Idaho resident in 1996.

Correspondence was mailed to Mr. [Redacted] on May 28, 1999; July 19, 1999; October 1, 1999; and November 11, 1999 requesting information on the 97 Porsche. Mr. [Redacted] did not respond to these letters. An NOD based on NADA Official Used Car Guide's average retail value of \$79,360 for the Porsche was issued on February 10, 2000. Mr. [Redacted] hand carried his protest of the NOD to the Commission's Boise offices on April 12, 2000.

In his letter of protest dated April 12, 2000, Mr. [Redacted] stated:

I [Redacted] – protest the Deficiency Determination. Reason the State of Utah has already assessed tax on this car, from [Redacted].

With his protest letter, Mr. [Redacted] provided a copy of a Utah NOD for tax, penalty and interest, but did not provide evidence that the Utah deficiency was ever paid. Requests by the Commission for evidence that the Utah NOD was paid were mailed on May 12, 2000 and June 7, 2000 with no response from Mr. [Redacted].

Mr. [Redacted] claimed that Utah has already assessed use tax on the car. Tangible personal property subject to Idaho use tax that has been subject to a general sales or use tax by another state is addressed in Idaho Code Section 63-3621(j) which stated:

When the tangible personal property subject to use tax has been subjected to a general retail sales or use tax by another state of the United States in an amount equal to or greater than the amount of the Idaho tax, and evidence can be given of such payment, the property will not be subject to Idaho use tax. If the amount paid the other state was less, the property will be subject to use tax to the extent that the Idaho tax exceeds the tax paid to the other state. For the purposes of this subsection, a registration certificate or title issued by another

state or subdivision thereof for a vehicle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall be sufficient evidence of payment of a general retail sales or use tax.

Mr. [Redacted] has not provided evidence to show that the Utah use tax deficiency was ever paid.

In this case, Mr. [Redacted] is protesting a use tax deficiency determination by the Commission. In such cases, the burden is upon the taxpayer to show that the deficiency determination was incorrect. See, Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 574-575, 716 P.2d 1344 (App. 1986) (taxpayer must show the deficiency determination was incorrect).

Besides taxing retail sales, the Idaho Sales Tax Act also imposes an excise tax on the storage, use, or consumption of tangible personal property in Idaho. Idaho Code § 63-3621 stated:

An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after July 1, 1965, for storage, use, or other consumption in this state at the rate of five per cent (5%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property. (Emphasis added.)

The use tax acts as a counterpart to the sales tax by reaching property used in Idaho, but purchased free from tax in this state or in other states. It applies to "every person storing, using, or otherwise consuming, in this state, tangible personal property," and the person's liability is not extinguished until the tax has been paid to this state. Idaho Code § 63-3621(a). It is the physical presence of the property within the state which provides sufficient nexus to justify the assessment of use taxes, without regard to whether the person is a resident or nonresident of the state. See, e.g., Towle v. Commissioner of Revenue, 492 N.E.2d 739, 743 (Mass. 1986), ruling that the state could constitutionally impose use tax on a sailboat temporarily stored within the state by a nonresident: "There is no constitutional problem with a State's imposing a tax on property used in that State, but

purchased elsewhere." (Citations omitted.)

The terms "storage" and "use" are broadly defined by Idaho Code § 63-3615. Storage includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer. Use includes the exercise of any right or power over tangible personal property incident to the ownership of the property. The terms do not include a sale of tangible personal property in the regular course of business or storage or use for the purpose of subsequently transporting the property out of Idaho for use solely outside this state.

Because of the obvious difficulties in tracking personal property entering and leaving the state, Idaho Code 63-3621(i) provides that "[I]t shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer for storage, use or other consumption in this state." This presumption applies in this case to any motor vehicle brought into Idaho by Mr. [Redacted].

In summary, any tangible personal property brought into this state by any person is presumed to have been brought into this state for storage or use here and is subject to use tax unless the person can show that the property was not "stored" or "used" here.

Mr. [Redacted] use and storage of the motor vehicle in Idaho would require the payment of use taxes, penalty, and interest on the motor vehicle to this state based on the value of the motor vehicle when it was first used in this state.

WHEREFORE, the Notice of Deficiency Determination dated February 10, 2000 is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that Mr. [Redacted] pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/97	\$3,968	\$992	\$1,001	\$5,961

Interest is computed through June 6, 2001.

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