

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 15310 |
| [REDACTED], |) | |
| |) | DECISION |
| Petitioner. |) | |
| _____ |) | |

On December 27, 2000, the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (taxpayer), proposing additional use tax, penalties, and interest for 1999 in the total amount of \$3,762.16.

On January 2, 2001, a timely protest and petition for redetermination was filed by the taxpayer's attorney, Mr. [Redacted]. In the protest letter Mr. [Redacted] demanded an informal hearing for the taxpayer but did not request an informal hearing be scheduled. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the deficiency determination.

In his letter dated April 24, 2001, Mr. [Redacted] requested copies of the information used to compute the tax in this case.

The tax amount in the original NOD was based on the following values for Mr. [Redacted] motor vehicles and snowmobiles that he used in Idaho:

| <u>VEHICLE TYPE</u> | <u>VIN#</u> | <u>VALUE\$</u> |
|----------------------------------|-------------|-----------------|
| 1996 Dodge Ram | [Redacted] | \$22,088 |
| 1992 Nissan Pathfinder | | 13,980 |
| 1994 Arctic Cat 900cc Thundercat | | 2,500 |
| 1996 Arctic Cat 700cc Wildcat | | <u>2,500</u> |
| | Total Value | <u>\$41,067</u> |

The tax, penalties, and interest asserted in the original NOD were as follows:

| <u>YEAR</u> | <u>TAX</u> | <u>FRAUD PENALTY</u> | <u>NONFILER PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|------------|--------------------------|-----------------------------|-----------------|--------------|
| 12/1999 | \$2,053.35 | \$1,026.68 | \$513.34 | \$168.79 | \$3,762.16 |

In the protest letter dated January 2, 2001, Mr. [Redacted] stated in pertinent part:

The basis for our appeal, as Mr. [Redacted] explained to you, is that he is a Montana resident. He resided in [Redacted] in conjunction with his employment at [Redacted] as a “replacement worker.” That employment as we all know, was temporary in nature and certainly of unknown duration. It has always been his intent to return to Montana following his employment, always considered himself a Montana resident, and as such is and at all times was a legal Montana resident. (Emphasis added).

It is clear from Mr. [Redacted] statement in his letter that Mr. [Redacted] resided in [Redacted], Idaho.

Mr. [Redacted] filed the following income tax returns while residing in Idaho:

1. Form 43, Idaho part-year resident and nonresident income tax return for the tax year 1995 with a filing status of single and showing three full months in Idaho. The mailing address listed on this return was [Redacted], Idaho.
2. Form 43, Idaho part-year resident and nonresident income tax return for the tax year 1996 with a filing status of single and showing eight full months in Idaho.
3. Form 40, Idaho individual income tax return for the tax year 1998 with a filing status of married filing joint. This is a full-year resident return. The mailing address listed on this return was [Redacted], Idaho.
4. Form 40, Idaho individual income tax return for the tax year 1999 with a filing status of married filing joint. This is a full-year resident return. The mailing address listed on this return was [Redacted], Idaho.
5. Form 43, Idaho part-year resident and nonresident income tax return for the tax year 2000 with a filing status of married filing joint and showing zero full months in Idaho for Mr.

[Redacted] and 12 full months in Idaho for his spouse.

Mr. [Redacted] showed on his Idaho part-year resident and nonresident income tax return for the tax year 2000 that he had zero full months in Idaho and 12 full months in Idaho for his spouse. This statement seems to be in conflict with information the Commission obtained from [Redacted] that Mr. [Redacted] provided to the Idaho court in conjunction with his divorce. As part of his divorce proceedings, a complaint Mr. [Redacted] filed with [Redacted] on August 24, 2000, stated, "[Redacted] is now and has been for a period of six weeks immediately preceding the filing . . . a resident of . . . Idaho." In an affidavit filed September 27, 2000, he stated, "I continue to reside in the family home. . . ." In the same September 27, 2000, document Mr. [Redacted] asked for "exclusive possession of the family home. . ." According to [Redacted] records, Mr. [Redacted] still owns the family home located in [Redacted], Idaho. Mr. [Redacted] filed his original and amended 1999 income tax returns on January 21, 2000 and March 15, 2000, respectively, using his [Redacted], Idaho address.

On October 30, 2000, a memo was sent to the state of Montana requesting Mr. [Redacted] filing history for 1995, 1996, 1997, 1998, and 1999. A letter received from the state of Montana stated that Mr. [Redacted] filed Montana individual income tax returns as a full-year resident for the years 1990 through 1994 and that Mr. [Redacted] indicated on his 1995 Montana part-year resident income tax return that his residency changed from Montana to Idaho on September 1, 1995. Mr. [Redacted] did not file Montana income tax returns for the years 1996 through 1999.

On December 16, 1999, Mr. [Redacted] applied for and received an Idaho homeowner's exemption from property taxes on his Idaho residence at [Redacted], Idaho. In the application, Mr. [Redacted] certified that he was the owner/occupant as of October 29, 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] owned all of the motor vehicles and snowmobiles identified in the Commission's deficiency determination and all were used in Idaho during the periods identified in the deficiency determination.

Mr. [Redacted] began residing in Idaho in October of 1995 and left Idaho around September of 1996. He returned to Idaho in 1998 making it his place of residence again. Mr. [Redacted] was residing in Idaho during the time the motor vehicles and snowmobiles were used or stored in Idaho.

The Commission summoned [Redacted] in [Redacted], Idaho for all paperwork relating to any and all loans or applications for credit for Mr. [Redacted]. [Redacted] provided the following information in response to the Commission's summons.

On December 8, 1999, Mr. [Redacted] purchased a 1992 Nissan Pathfinder from [Redacted] in [Redacted], Washington. Mr. [Redacted] did not pay the Washington sales tax on this motor vehicle. Mr. [Redacted] completed Washington's nonresident buyer affidavit that stated he was a bona fide resident of the state of Montana using an address of [Redacted], Montana.

On February 12, 2000, Mr. [Redacted] purchased a 1996 Dodge Ram pickup truck from [Redacted], in [Redacted], Washington. Mr. [Redacted] did not pay the Washington sales tax on this motor vehicle. Mr. [Redacted] completed Washington's nonresident buyer affidavit that stated he was a bona fide resident of the state of Montana using an address of [Redacted], Montana.

The address of [Redacted], Montana belongs to [Redacted] who is Mr. [Redacted] father.

In Mr. [Redacted] letter dated April 4, 2001 he stated in pertinent part:

Enclosed please find photocopies of his Montana Motor Vehicle Registration forms for the past two years which clearly indicate that

Mr. [Redacted] did, in fact, pay tax to the State of Montana on the vehicles. It is my understanding that the state of Idaho's use tax only applies if tax was not paid elsewhere. Clearly this is not the case and I would appreciate your comments on this issue.

The tax Mr. [Redacted] is referring to in his letter is not a general sales tax but a fee associated with the registration of Mr. [Redacted] motor vehicles in Montana. 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 § 63-3621(j) (1999) 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. (Emphasis added)

The Commission takes notice of the fact that the state of Montana does not have a general sales or use tax. Therefore, this credit does not apply to motor vehicles used by Mr. [Redacted].

In Mr. [Redacted] letter dated April 24, 2001, he also stated that the state of Idaho is attempting to collect a double-tax on Mr. [Redacted] snowmobiles. The tax imposed by the Commission in Mr. [Redacted] NOD is a use tax on the value of snowmobiles that were used or stored in Idaho. Mr. [Redacted] has provided copies of two Nonresident Certificates for fees paid to Idaho State Parks and Recreation to run his snowmobiles in Use Area 28. Idaho State Parks and Recreation was not taxing the snowmobiles but rather charging a fee to Mr. [Redacted] for the right to use the groomed trails in Use Area 28.

The original NOD was based on the total purchase price of the motor vehicles. The use tax,

in this case, should be based on the purchase price of the motor vehicles less the value given for the motor vehicles used as trade-ins. An adjustment has been made to the original NOD to account for the value of Mr. [Redacted] trade-ins.

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

Besides taxing retail sales, Idaho's Sales Tax Act also imposes an excise tax on the storage, use, or consumption of tangible personal property in Idaho. Idaho Code § 63-3621 (1999) provided in part:

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 percent (5%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.

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, for example, 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."

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 the state of tangible personal property purchased from a retailer. Use includes the exercise of any right or power over tangible personal property incident to ownership of the property. The terms do not include the 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 vehicles and snowmobiles brought into Idaho by Mr. [Redacted]. In construing a similar statutory presumption contained in the Massachusetts' sales and use tax act, that state's Supreme Court held that a bare assertion by the taxpayer that at the time of purchase he did not intend to use the property in the state was not sufficient to rebut the presumption. M & T Charters v. Com'r of Revenue, 533 N.E.2d 1359, 1361-62 (Mass. 1989).

In summary, any tangible personal property brought into this state by any person (resident or nonresident) is presumed to have been brought into this state for storage or use here and is subject to use tax unless the person can either show that the property was not "stored" or "used" here or can identify an applicable exemption from use tax. If someone brought motor vehicles into this state and used or stored them here, that person is liable for use tax unless the person's actions fall clearly

within some exemption to the use tax.

It is well established in Idaho that exemptions from tax must be strictly construed against the party claiming the exemption:

Statutes granting exemptions, which exist as a matter of legislative grace, are strictly construed against the taxpayer and in favor of the state. . . . The burden is on the claimant taxpayer to clearly establish a right of exemption and the terms of the exemption must be so specific and certain as to leave no room for doubt. . . . An exemption cannot be sustained unless it is within the spirit as well as the letter of the law. . . . The courts are bound by the statute and cannot create or extend by judicial construction an exemption not specifically authorized. . . .

Appeal of Evangelical Lutheran Good Samaritan Society, 119 Idaho 126, 129, 804 P.2d 299 (1990). Although the a (exemption from use tax must be strictly construed against taxpayer).

In this case, Mr. [Redacted] has the burden of clearly establishing that he falls within the terms of some exemption to Idaho's use tax. Further, the terms of any exemption Mr. [Redacted] claims must be so specific and certain as to leave no room for doubt that they apply to his use of motor vehicles and snowmobiles in Idaho.

Any person, resident or nonresident who uses or stores a motor vehicles and snowmobiles in this state for which no general sales or use taxes have been previously paid is responsible for paying Idaho use taxes on the motor vehicles and snowmobiles unless an exemption from the tax is clearly applicable.

Idaho Code § 63-3621(k) creates a limited exemption from use tax for motor vehicles occasionally used in Idaho by nonresidents of this state. During the period relevant to this case, that section provided:

The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than a cumulative period of time totaling ninety

(90) days in any consecutive twelve (12) months, and which is not required to be registered or licensed under the laws of this state.
(Emphasis added)

This exemption applies only to nonresidents of Idaho who use motor vehicles for limited periods of time in Idaho. In summary, during the period which Mr. [Redacted] used his motor vehicles in Idaho, the requirements of the nonresident exemption for motor vehicles were:

- (1) Motor vehicles must be used by a nonresident;
- (2) Motor vehicles must be licensed under the laws of the owner's state of residence;
- (3) Vehicles must not have been used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months; and
- (4) Motor vehicles must not have been required to be registered or licensed under the laws of this state.

If Mr. [Redacted] failed to meet any of the above requirements, he did not qualify for the exemption and was required to pay use taxes for his use of vehicles in Idaho.

The Idaho Sales Tax Act does not define the term “nonresident.” In this situation the definition of “nonresident” found in a regular or legal dictionary should be used to define this term. The American Heritage Desk Dictionary, Copyright 1981 by Houghton Mifflin Company, defined nonresident as “not living in a particular place.” Clearly, Mr. [Redacted] could not claim to be a nonresident of Idaho because he was living in Idaho.

Idaho Code § 63-3621(l) creates a limited exemption from use tax for tangible personal property brought to Idaho by new residents of this state. During the period relevant to this case, that section provided:

The use tax herein imposed shall not apply to the use of household goods and personal effects by a resident of this state, if such articles were acquired by such person in another state while a resident of that state and primarily for use outside this state and if

such use was actual and substantial, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial. For purposes of this subsection, "resident" shall be as defined in section 63-3013 or 63-3013A, Idaho Code.

Idaho Code §§ 63-3013 and 63-3013A stated in pertinent part:

63-3013. Resident. (1) The term "resident," for income tax purposes, means any individual who:

- (a) Is domiciled in the state of Idaho for the entire taxable year; or
- (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

63-3013A. Part-year resident. The term "part-year resident," for income tax purposes, means any individual who is not a resident and who:

- (a) Has changed his domicile from Idaho or to Idaho during the taxable year; or
- (b) Has resided in Idaho for more than one (1) day during the taxable year. An individual shall be deemed to reside within Idaho for any calendar day in which that individual has a place of abode in this state and is present in this state for more than a temporary or transitory purpose. Presence for any fraction of a calendar day shall be counted as a whole day.

The new resident exemption applies to automobiles and other property acquired by persons while they are bona fide residents of another state who bring the property with them when they become bona fide residents of this state.

This exemption does not apply to the facts of this case since the motor vehicles and snowmobiles in question were acquired while Mr. [Redacted] was a resident of Idaho.

In keeping with the rule of strict construction of exemptions, the burden is upon Mr. [Redacted] to show that he clearly fell within the terms of the exemption. Mr. [Redacted] must

show that the terms of the exemption are "so specific and certain as to leave no room for doubt" as to their applicability to his use of motor vehicles in this state. Appeal of Evangelical Lutheran Good Samaritan Society, supra, 119 Idaho at 129.

In the original NOD the Commission asserted a fraud penalty of fifty percent and a nonfiler penalty of twenty-five percent of the tax due. After review of all the information contained in Mr. [Redacted] file, it has been determined that the fraud penalty should be waived. However, Mr. [Redacted] was given ample opportunity to pay the tax and interest in this case; therefore, the nonfiler penalty will not be waived.

The statute imposing a penalty for failure to file can be found in Idaho Code § 63-3046(c) (1999) which stated:

In the event the return required by this act is not filed, or in the event the return is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns.

The statute relating to filing and payment of sales and use taxes, Idaho Code § 63-3623 (1999), stated in pertinent part:

(a) The taxes imposed by this act are due and payable to the state tax commission monthly on or before the twentieth day of the succeeding month. . . .

(c) On or before the twentieth day of the month a return shall be filed with the state tax commission in such form as the state tax commission may prescribe.

(d) For the purpose of the sales tax, a return shall be filed by every seller. For the purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his duly authorized agent. . . .

Thus, as a matter of law, the Sales Tax Act required that Mr. [Redacted] file a use tax return on the succeeding month.

The Idaho Supreme Court in hearing Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), addressed whether the taxpayer was required to pay interest, the Court said:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest . . . shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

In this case, there appears to be no question that Mr. [Redacted] was a resident of Idaho during the years when the motor vehicles and snowmobiles were first used in Idaho. As a result, he did not qualify for the nonresident or new resident exemptions from use tax and was required to pay use tax on the motor vehicles and snowmobiles he used or stored in this state.

The Commission finds that Mr. [Redacted] resided in Idaho and therefore, by definition, could not be a nonresident of the state of Idaho. Mr. [Redacted] recognized Idaho as his state of residence for purposes of the homeowner's exemption and by filing resident Idaho income tax returns. Since Mr. [Redacted] was residing in Idaho, his use or storage of motor vehicles and snowmobiles in Idaho required the payment of use taxes to this state.

WHEREFORE, the Notice of Deficiency Determination dated December 27, 2000, as MODIFIED, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that Mr. [Redacted] pay the

following tax, penalty, and interest:

| <u>YEAR</u> | <u>TAX</u> | <u>NONFILER PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|---------------------|------------|-----------------------------|-----------------|--------------|
| 12/1999 & 2/2000 | \$1,153 | \$288 | \$166 | \$1,607 |

Interest is computed through November 29, 2001.

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

An explanation of Mr. [Redacted] 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]

ADMINISTRATIVE ASSISTANT 1