

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 18095
[Redacted],)
) DECISION
Petitioner.)
_____)

On December 3, 2003, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted], proposing use tax, penalty, and interest for September 2002 in the total amount of \$16,032.

On February 10, 2004, a timely protest and petition for redetermination was filed by the LLC's registered agent, [Redacted] A hearing has not been requested by the LLC or [Redacted]. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

TDB imposed use tax on a motor home owned by the LLC. The motor home was purchased in [Redacted] and was titled and registered there. The single member of the LLC brought the motor home to Idaho for a short time before taking it to [Redacted]. The LLC's single member owner, [Redacted] was a long time resident of Idaho. Mr. [Redacted] resided in Idaho at the time of purchase and at the time he brought the motor home into Idaho. Mr. [Redacted] filed Idaho resident individual income tax returns for the years 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002.

In the protest letter for the LLC dated February 10, 2004, Mr. [Redacted] stated three legal arguments to the use tax imposed in the NOD:

Argument 1: Use tax isn't owned [sic] by LLC to Idaho

Argument 2: Even if LLC has no business purpose, the single member of LLC was a nonresident of Idaho at the time of purchase and at all times subsequent to the purchase of the vehicle, and therefore Idaho has no jurisdiction and the use tax is not owed.

Argument 3: If use tax is owed, the tax owed should be recalculated based on the actual purchase price of the vehicle less the "trace-in allowance" and less the "general retail sales or use tax" paid to [Redacted].

On May 4, 2004, TDB sent a letter to the single member owner of LLC that modified the use tax, penalty, and interest in the NOD based on the actual purchase price of the motor home.

Idaho imposes a tax on storage, use or other consumption of tangible personal property brought into the state. Idaho Code § 63-3621. It is uncontroverted that the motor home was brought into Idaho and, absent an exemption, the LLC owes a use tax. However, Idaho Code § 63-3621(k) provides:

(k) 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.

The LLC first argues that, because the LLC was formed in the state of [Redacted], it is a nonresident LLC in the state of Idaho and, because the motor home was not used in Idaho for a 90-day period, no use tax is owed. The issue is whether an LLC formed in another jurisdiction is a resident of this state. Interpreting a similar exemption statute, the [Redacted] Supreme Court held that a corporation incorporated in [Redacted] but actively doing business in [Redacted] was a resident of [Redacted] and therefore owed use tax on its use of tangible personal property within the state. *Great Lakes Dredge and Dock Company v. Norberg*, 369 A.2d 1101 (R.I. 1977). There, the Court held the determination of whether a corporation organized under the laws of another state is a

resident of [Redacted] must be made within the meaning of the respective statute under consideration. Here, the statute under question is the statute that imposes use tax on taxpayers who bring tangible personal property into Idaho. The use tax is complimentary to the sales tax, which imposes tax on the retail sales of tangible personal property within Idaho. The purpose of the exemption is to allow nonresidents to bring motor vehicles into the state for a short period of time up to 90 days. In these cases, the nonresident would not do significant business in the state and would not be using the statute to avoid the payment of sales or use tax. If an entity that has substantial contacts with Idaho bought the vehicle in the state, it would pay sales tax on the transaction. Likewise, if the entity bought the vehicle outside the state and brought it into the state, if a resident, it would owe the use tax. However, a corporation or LLC with significant contacts with Idaho should not be able to avoid the payment of use tax simply by forming itself in another state. If the entity otherwise has significant contacts with Idaho, it will be considered to be a resident for purposes of the use tax statute.

The following facts show that the LLC was a resident LLC in Idaho when the motor home was purchased due to the contacts of its single member owner with Idaho.

Mr. [Redacted] owned an Idaho residence at [Redacted], Idaho until September 27, 2002. He received an Idaho homeowner's exemption from property taxes on this residence. In the application for this exemption, Mr. [Redacted] certified that he was the owner/occupant of this residence. Idaho Code § 63-602G 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] purchased Idaho resident fish and game licenses on March 6, 2002 and June 19, 2002.

Mr. [Redacted] renewed his Idaho driver's license on February 15, 2001, which is valid until it expires in March, 2005.

Mr. [Redacted] formed a single member limited liability company in the state of [Redacted]. The LLC purchased a [Redacted] (motor home) in September, 2002 from [Redacted]. In the LLC's protest letter dated February 10, 2004, sent in by Mr. [Redacted], he stated in pertinent part the following reasons why Mr. [Redacted] formed the LLC:

Because the member of LLC wasn't a resident of [Redacted] at the time of purchase of coach by LLC, the member couldn't make a legal registration of coach in [Redacted].

Because the member desired to take advantage of [Redacted] lack of a sales tax, the member established a [Redacted] limited liability company for the purpose of owning the coach and allowing LLC to make a legal registration in [Redacted] (Emphasis added).

Mr. [Redacted] purchased a home in [Redacted] on November 18, 2002.

Idaho motor vehicle records indicate that Mr. [Redacted] renewed his Idaho registration on his [Redacted] truck on 12/11/02.

[Redacted] purchased a new [Redacted] pickup from [Redacted] in [Redacted], Idaho on July 22, 2003. Idaho Sales Tax Exemption Certificate – Vehicle Vessel was completed for that sale to claim an exemption from Idaho sales tax for this truck and was signed by [Redacted] on July 19, 2003. [Redacted]' Retail Order for Motor Vehicle form for the sale of this pickup was signed by [Redacted] on July 19, 2003.

Based on all the facts cited previously in this decision, Mr. [Redacted] was an Idaho resident at the time his single member limited liability company purchased the motor home. There are many Idaho resident corporations that are incorporated in other states. For instance, [Redacted] is an Idaho resident corporation that is incorporated in the state of [Redacted]. Based on all of these contacts by Mr [Redacted], the LLC was an Idaho resident when it purchased the motor home and

brought it to Idaho.

WHEREFORE, the Notice of Deficiency Determination dated December 10, 2003, as MODIFIED, is hereby APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the petitioner pay the following taxes, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
9/2002	\$2,985	\$746	\$429	\$4,160

Interest is computed through March 5, 2005.

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

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

DATED this ___ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of _____, 2004, 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