

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
 [REDACTED]) DOCKET NO. 18561
)
 Petitioner.) DECISION
)
)
 _____)

On November 17, 2004, [Redacted] (taxpayer) filed a claim requesting a refund of use tax paid on the purchase of three glider kit vehicles. The amount of the tax paid was \$8,324.10. The Tax Commission (Commission) staff advised the taxpayer that it needed more facts and documentation to determine if the refund claim was valid. After receiving and reviewing this documentation, the Commission issued a Notice of Deficiency Determination Refund Denial on May 13, 2005.

The taxpayer protested the refund denial on July 12, 2005. The taxpayer requested an informal hearing, which was held on November 16, 2005.

Idaho Code § 49-123(2)(f) provides the following definition of “glider kit vehicle”:

(f) Glider kit vehicle. Every large truck manufactured from a kit manufactured by a manufacturer of large trucks which consists of a frame, cab complete with wiring, instruments, fenders and hood and front axles and wheels. The "glider kit" is made into a complete assembly by the addition of the engine, transmission, rear axles, wheels and tires.

The taxpayer purchased the glider kits and assembled the vehicles in its own shop. When the taxpayer registered the vehicles, it was required by the Idaho Department of Transportation to pay use tax.

The taxpayer argues that the use of the vehicles is exempted by Idaho Code § 63-3622R(c). This statute was recently amended by the Idaho Legislature. At the time the taxpayer purchased the glider kits, the statute stated:

63-3622R. MOTOR VEHICLES, USED MANUFACTURED HOMES, VESSELS, ALL-TERRAIN VEHICLES, TRAILERS, OFF-ROAD MOTORCYCLES AND SNOWMOBILES. There are exempted from the taxes imposed by this chapter:

...
(c) Sale or lease of motor vehicles with a maximum gross registered weight over twenty-six thousand (26,000) pounds, which shall be immediately registered under the international registration plan or similar proportional or pro rata registration system, whether or not base plated in Idaho, and the sale or lease of trailers which are part of a fleet of vehicles registered under such proportional or pro rata registration system when such vehicles and trailers are substantially used in interstate commerce. If such a motor vehicle or trailer is not substantially used in interstate commerce during any annual registration period under the international registration plan, it shall be deemed used in Idaho and subject to the use tax under section 63-3621, Idaho Code. For the purpose of this subsection, "substantially used in interstate commerce" means that the vehicles or trailers will be part of a fleet with a minimum of ten percent (10%) of the miles operated by the fleet accrued outside of Idaho in any annual registration period under the international registration plan...

The Commission has consistently held that purchases of glider kits do not qualify for this exemption. In fact Idaho Sales Tax Rule 101.06 (IDAPA 35.01.02.101.06) states explicitly that the “exemption does not apply to parts, glider kits as defined by Section 49-123, Idaho Code, supplies, or other tangible personal property purchased by persons engaged in interstate commerce.” This rule was promulgated by the Commission in 1990 following the enactment of the exemption.

Nevertheless, the taxpayer argues that the rule is contrary to Idaho Code §§ 63-3606B, 63-3622R, and 49-123. Idaho Code § 63-3606B is the definition of “motor vehicle” for the purposes of the Sales Tax Act. That statute states:

63-3606B. MOTOR VEHICLE. -- The term "motor

vehicle" means a vehicle registered or required to be registered for use on public roads. The term "motor vehicle" does not include vehicles not required to be registered pursuant to section 49-426, Idaho Code, or intended for off-road use only, including snowmobiles, boats and aircraft, and all-terrain vehicles and off-road motorcycles when not used on public roads.

It is not clear how Rule 101 could contradict either Idaho Code §§ 63-3606B or 49-123 since it neither adds to nor takes away anything from the statutory definitions of "motor vehicle" or "glider kit vehicle."

Furthermore, the Commission does not believe that the rule contradicts Idaho Code § 63-3622R. That statute exempts certain sales of motor vehicles, but only if they are "immediately registered under the international registration plan." It is not disputed that, at the time of purchase, a glider kit cannot be registered. Since it cannot be registered until it is assembled into a complete truck, immediate registration is impossible.

It is true that the Idaho Legislature recently amended Idaho Code § 63-3622R to extend the exemption to sales of glider kits that will be used to assemble glider kit vehicles that will be registered under the International Registration Plan. That statute does not take effect until July 1, 2006. If, as the taxpayer argues, the exemption already applies to glider kit vehicles, the amendment would be superfluous. The Idaho Supreme Court has stated that "it is not to be presumed that the legislature performed an idle act of enacting a superfluous statute," *Walker v. Nationwide Financial Corp.*, 02 Idaho 266, 629 P.2d 662 (1981), *Richardson v. State Tax Commission*, 100 Idaho 705, 604 P.2d 719 (1979). For these reasons, the Commission is unwilling to reverse the long held interpretation of the statute found in Rule 101.06.

WHEREFORE, the Notice of Deficiency Determination Refund Denial dated July 12, 2005, is hereby APPROVED, AFFIRMED and MADE FINAL.

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

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, 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]