

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20196
[Redacted])	
Taxpayer.)	DECISION
)	
)	
)	

On April 20, 2007, the staff of the Managed Audit Program of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing sales and use tax and interest for the period of September 1, 2006, through September 30, 2006, in the total amount of \$76,208.

On May 10, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested an informal hearing before the Commission, which was held on July 10, 2007.

The only issue in this case is the imposition of use tax [Redacted]. At the time of purchase, the taxpayer claimed a tax exemption under Idaho Code § 63-3622R, also known as the IRP exemption.

Use tax is imposed under Idaho Code § 63-3621, which taxes the storage, use, or other consumption of tangible personal property in Idaho, unless an exemption applies. The use tax rate is the same as the sales tax rate. Any liability for use tax is extinguished if the purchaser pays sales tax to the seller at the time of purchase. In other words, use tax is imposed on purchases for which the seller did not charge sales tax.

The exemption that the taxpayer is claiming, Idaho Code § 63-3622R, states, in relevant part:

63-3622R. MOTOR VEHICLES, USED
MANUFACTURED HOMES, VESSELS, ALL-TERRAIN

VEHICLES, TRAILERS, OFF-ROAD MOTORCYCLES, SNOWMOBILES AND GLIDER KITS. 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. (Emphasis added.)

The taxpayer admits that the vehicles did not meet the out-of-state mileage requirement during the registration period, ending on September 30, 2006; however, the taxpayer has raised two arguments about the interpretation of the statute.

The taxpayer's first argument focuses on the following language: "'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 taxpayer argues that since the [Redacted] qualified for the exemption in prior years, it has met the 10 percent in any registration period. The statute, however, expressly states that the owner must pay the tax if the vehicle is not substantially used in interstate commerce. The words "during any registration period" define the time period that must be reviewed. For instance, if the taxpayer's [Redacted] did not meet the out-of-state requirement for the first six months of the period, it would not trigger any tax liability. The tax can only be imposed if [Redacted] does not meet the requirement after an

entire registration period has passed. The taxpayer's interpretation would make the words "it shall be deemed used in Idaho and subject to use tax" meaningless.

Furthermore, Idaho sales tax rule 107.07 (IDAPA 35.01.02.101.07) states:

Use tax will become due at the end of any registration period for which the out of state mileage is less than ten percent (10%) of the total fleet mileage. Tax will be due on the value of the trucks and trailers on the twentieth day of the month following the end of the registration period.

Subsection 07 became effective March 30, 2007. It does not, however, reflect a new interpretation of the statute by the Tax Commission. It was added because it was not clear whether the tax would be due at the beginning or end of the period. The rule states that tax is due at the end of the period. This clarifies that interest on the tax would not start to accrue until that date.

Further evidence of the Commission's interpretation can be found on the exemption claim form ST-104-MV. This is the form that the purchaser must complete and give to the seller in order to purchase a [Redacted] exempt from tax under the IRP exemption. The form, which is signed by the purchaser, includes the following statement: "I understand that if the out-of-Idaho [Redacted] mileage drops below 10% for any registration year, I must pay use tax to the Tax Commission on the fair market value of this motor vehicle at that time."

The second argument is based on the commerce clause of the United States Constitution. The taxpayer argues first that imposing tax on the use of these vehicles is barred by the "negative" or "dormant" commerce clause. Alternatively, the taxpayer argues that the amount of tax should be apportioned between instate and out-of-state use.

The case law involving taxation and the commerce clause is extensive. Although some taxes have been held unconstitutional on commerce clause grounds, it is not a complete bar. In

Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977), the court held that states could impose taxes that affected interstate commerce as long as “the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State.” 430 U.S., at 279, 97 S.Ct., at 1079. This is the so called *Complete Auto* “four prong test.”

Because the taxpayer’s activities in this case were almost all inside of Idaho, it is not necessary to go into an in-depth analysis of each of these prongs. It is clear that the taxpayer is using public roads in Idaho and benefiting from all the public services available to it. The taxpayer has offered no authority to support its position, and the Commission is not aware of any.

Neither is there any support for apportioning the tax according to out-of-state mileage. In *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 514 U.S. 175, 115 S.Ct. 1331 (1995), the court ruled that the entire sales price of a bus ticket sold in Oklahoma was subject to sales tax even though the passengers were traveling from Oklahoma to other states. The primary concern was whether the same sale could be taxed by more than one state. The *Jefferson Lines* court reasoned that no other state had the opportunity to tax the passengers and therefore the sales tax could be entirely apportioned to Oklahoma. The court cited *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33, 60 S.Ct. 388, (1940), noting that consumption in another state would not bar a tax on a sale that occurs in the taxing state:

The taxable event comprises agreement, payment, and delivery of some of the services in the taxing State; no other State can claim to be the site of the same combination. The economic activity represented by the receipt of the ticket for "consumption" in the form of commencement and partial provision of the transportation thus closely resembles Berwind- White 's "delivery

of goods within the State upon their purchase for consumption," id., at 58, 60 S.Ct., at 398, especially *given that full "consumption" or "use" of the purchased goods within the taxing State has never been a condition for taxing a sale of those goods.* (Emphasis added.)

In this case, since the trucks in question were used in Idaho more than 90 percent of the time, it is unlikely that they came to rest in another state long enough for that state to impose tax on their use. Even if another state could have legally imposed tax, there is no possibility for double taxation, since Idaho would give credit for tax paid to another state under Idaho Code § 63-6321(j)¹. Thus the use tax in this case is not barred by the Commerce Clause.

The taxpayer also asked several questions about Idaho Code § 63-3622R. This decision will deal with three of them. They concern the calculation of the tax, whether a refund could be claimed if the fleet met the out-of-state mileage requirement in a later registration period, and the definition of "fleet."

First, the tax was computed by applying the appropriate tax rate, which was five percent at the end of the registration period, to the value of the trucks at that time. In this case the values were supplied by one of the taxpayer's employees. The Tax Commission accepted these values without question.

Second, there is no statutory provision for a refund in future years. Moreover, such a provision would be difficult to administer and would not be practical. Conceivably, it could lead to an endless cycle of refund claims followed by notices of deficiency involving the same

¹ (j) 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.

[Redacted]. On the other hand, since use tax is due only once, no tax would be due in the future on the use [Redacted] included in this audit.

Finally, the taxpayer asks if the 10 percent requirement should be applied to all [Redacted] owned by the taxpayer [Redacted] for purposes of the International Registration Plan. The Commission has already ruled that the term “fleet” means those trucks designated as belonging to a specific fleet designated by the owner for the purpose of IRP registration. See the decision for Docket No. [Redacted]. The Commission notes further that the exemption requires IRP registration and it is therefore reasonable to adopt the IRP definition of “fleet.” Moreover, the taxpayer is entirely in control of designating the vehicles in each fleet. If it wanted to register all of its vehicles in a single fleet, it could do so. In this case, the taxpayer has chosen not to do so.

The taxpayer’s other questions were about the reasons for the 10 percent mileage requirement and whether amendments could be made to the statute. The Commission does not have the authority to write or amend statutes and the taxpayer’s questions can only be addressed by the legislature.

The Commission notes that the taxpayer paid the amount of the deficiency in full on May 3, 2007.

WHEREFORE, the Notice of Deficiency Determination dated April 20, 2007, is APPROVED, AFFIRMED and MADE FINAL.

The taxpayer has paid in full the amount due; and, therefore, no further demand for payment need be made.

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

DATED this _____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2007, 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.
