

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of )  
 ) DOCKET NO. 20558  
[REDACTED], )  
 ) DECISION  
 )  
Petitioner. )  
\_\_\_\_\_ )

Procedural Overview

The Idaho State Tax Commission (Commission) mailed a Notice of Deficiency Determination (NODD) dated July 3, 2007, to [Redacted] (Petitioner). The NODD notified the Petitioner that the Commission had received notification from an unlicensed Idaho cigarette distributor ([Redacted]) that indicated the Petitioner had purchased untaxed/unstamped cigarettes over the internet, telephone, and/or by mail order. Pursuant to Idaho Code § 63-2512(b), the Bureau informed the Petitioner that he owed a penalty to the state of Idaho in the amount of \$307.80.

The Commission received a letter dated September 19, 2007, which was treated as a valid protest. The Commission notified the Petitioner that he could have an informal hearing and/or submit information in support of his protest. On July 8, 2008, Idaho State Tax Commissioner [Redacted] conducted a telephonic informal conference with the Petitioner. The Commission has reviewed all of the information submitted by the Petitioner in support of his protest.

Discussion

The United States Congress through the Jenkins Act, 15 U.S.C. §376, requires that:

“[A]ny person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes, to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such a sale or transfer and shipment, shall—

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

In compliance with the Jenkins Act, 15 U.S.C. § 376, [Redacted], a [Redacted] company, provided three invoices to the Commission. These invoices reflect orders of cigarettes shipped to [Redacted] in April and May of 2007, for a total of 18 cartons of cigarettes. Pertinent language to this matter at the bottom of each invoice reads, “This sales record is created and maintained in the ordinary course of business to comply with the reporting requirements of the Jenkins Act, 15 U.S.C. § 375 et seq.”

Idaho Code § 63-2512(b) provides that:

The possession, purchase or consumption by any person of more than ten (10) packages of cigarettes without Idaho cigarette stamps is prohibited. Any person who possesses, purchases or consumes more than ten (10) packages of cigarettes without Idaho cigarette stamps shall be subject to a civil penalty equal to three (3) times the amount of tax due for each full or partial package of unstamped cigarettes in excess of ten (10), but in no event shall the penalty be less than fifty dollars (\$50.00). Such penalty shall be assessed a collected, as provided in section 63-2516, Idaho Code.

The penalty imposed by this subsection shall apply to persons acquiring cigarettes from internet, catalog, telephone and facsimile retailers.

Idaho Code § 63-2506(1) provides that the tax on the sale of cigarettes is “at the rate of fifty-seven cents (57¢) per package of twenty (20) cigarettes, . . .”

In accordance with Idaho Code § 63-2512(b) and § 63-2506(1), the Bureau delivered to the Petitioner an NODD for \$307.80. The Commission believes this is correct except that Idaho Code § 63-2512(b) only subjects the Petitioner “to a civil penalty equal to three (3) times the amount of tax due for each full or partial package of unstamped cigarettes in excess of ten (10) . . .” Each carton of cigarettes holds ten packages. The petitioner must pay the penalty for all cartons in excess of the first carton. Therefore, the petitioner must pay the penalty for seventeen (17) cartons instead of the eighteen (18) cartons set out in the NODD. The NODD is amended to reflect this change.

The tax is calculated at \$.57 per package. Idaho Code § 63-2506(1). Each carton contains ten (10) packages of cigarettes. Ten (10) packages times \$.57 per package equals \$5.70 per carton. Seventeen cartons times \$5.70 per carton equals \$96.90. The penalty is three (3) times the tax of \$96.90 which equals a total of \$290.70. Idaho Code § 63-2512(b). The petitioner owes a penalty of \$290.70 to the state of Idaho. This penalty will deter the petitioner and others from purchasing cigarettes in violation of Idaho law.

During this process the petitioner has asserted arguments which do not have a reasonable basis in fact or law. For example, he writes, “[Redacted] is not me. An all caps name is a fictitious corporate entity. I am not a corporation and do not act in commerce as such.” State and federal courts have rejected these types of arguments time and time again. In Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, Judge Easterbrook penned:

Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. “Tax protesters” have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead--so tax protesters think--to the elimination of their obligation to pay taxes. The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.

The Petitioner asserts arguments, similar to the type discussed by Judge [Redacted]. The petitioner's arguments are not supported by fact or law.

In his protest dated September 19, 2007, the Petitioner wrote in pertinent part that, "I do not deny I bought cigarettes from a business outside the State of Idaho." The petitioner acknowledges that he may be liable for sales tax but not for use tax or the penalty asserted in the NODD. The Commission is not asserting use or sales tax in the NODD, however, the Commission is asserting that the petitioner pay the civil penalty provided for in Idaho Code § 63-2512(b). The amount of the civil penalty in this matter is small enough that issues of collectability or hardship will not be addressed.

#### Conclusion

The arguments presented by the petitioner do not persuade the Commission that the taxpayer does not owe the penalty. However, the penalty is amended as discussed above to reflect the exclusion of one carton of cigarettes in accordance with the language in Idaho Code § 63-2512(b). Furthermore, the petitioner has provided no documentation or information that would show that the NODD prepared by the Bureau is incorrect. It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the petitioner to show that the tax deficiency is erroneous. Id. Since the petitioner has failed to meet this burden, the Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct as amended.

WHEREFORE, the Notice of Deficiency Determination dated July 3, 2007, is hereby APPROVED, AFFIRMED, AND MADE FINAL AS AMENDED.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the penalty discussed herein of \$290.70.

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.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, 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.