

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted]) DOCKET NO. 21523
)
) DECISION
Petitioner.)
_____)

On September 3, 2008, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination Refund Denial to [Redacted] (taxpayer) denying a refund of sales tax paid on the purchase of a new [Redacted] on July 29, 2008. The reporting period on the NOD was July 29, 2008, through August 29, 2008.

On September 26, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on April 9, 2009.

The only issue in this case is \$2,741.04 in sales tax paid to [Redacted] on the purchase of a new [Redacted] is licensed by the Idaho Transportation Department as a motor vehicle dealer. The license states that [Redacted] is authorized [Redacted],” which means the taxpayer is licensed to sell [Redacted].

The taxpayer stated that, at the time he purchased the vehicle in question, [Redacted] were selling for \$10,000 to \$15,000 above the manufacturer’s suggested retail price. The taxpayer, therefore, believed it was possible for him to purchase the car and sell it at a profit. The seller, however, would not sell the vehicle to the taxpayer without charging him tax, presumably because he was not licensed to sell new [Redacted]. The sales order names both [Redacted] as the purchasers.

The taxpayer stated that prior to purchasing the car, he called the Tax Commission and was advised that he could purchase [Redacted] for resale. If the dealer required him to pay tax, he could file a claim for refund. The taxpayer then made a claim for a refund of the tax. The Tax Commission then denied the refund because the vehicle was titled in both the corporate name and the taxpayer's name.

The taxpayer's main argument, then, is that the Commission is estopped from denying the refund. Equitable estoppel arises:

[w]hen a party makes a false representation or concealment of a material fact with actual or constructive knowledge of the truth; it is made with the intent that it be relied upon; the party asserting estoppel does not know or could not discover the truth; and the party asserting estoppel relies on it to the party's prejudice." *Hecla Min. Co. v. Star-Morning Min. Co.*, 122 Idaho 778, 782, 839 P.2d 1192, 1196 (1992); *Allen v. Reynolds*, 145 Idaho 807, 186 P.3d 663, (2008).

The Commission notes that the taxpayer did not rely on written advice, nor can the taxpayer identify the Commission employee who allegedly gave the incorrect advice in a telephone conversation; however, even if one assumes the taxpayer was incorrectly advised that he could file a claim for refund, there is no precedent in Idaho to support the argument that the Commission can be estopped from asserting a use tax deficiency in this case. In fact, the Idaho Supreme Court has ruled the opposite:

In the levy and imposition of taxes, the state acts in its sovereign capacity, and hence, in an action for the collection thereof, cannot be subjected to an equitable estoppel. (Citations omitted.)

The government is not estopped by previous acts or conduct of its agents with reference to the determination of tax liabilities or by failure to collect the tax, nor will the mistakes or misinformation of its officers estop it from collecting the tax. (Citations omitted.) *State of Idaho v. Adams*, 90 Idaho 195, 409 P.2d 415 (1965).

The Commission notes further that it is unclear whether the taxpayer informed the person he talked to that he was going to title [Redacted] in his own name. Idaho sales tax rule 108 (IDAPA 35.01.02.108) does not allow [Redacted] in the name of an individual without first paying sales or use tax.

The taxpayer, therefore, may not assert estoppel as a defense.

Furthermore, the Commission notes that the taxpayer has not sold the [Redacted] after holding it for approximately ten months. It is unlikely that a reasonably prudent business person would purchase a new [Redacted], hold it for a long period without selling it, and then sell it as used with the expectation of making a profit.

Finally, the Commission notes that the Motor Vehicle Code does not permit the taxpayer to buy and sell [Redacted]. Idaho Code § 49-1613(1)(f) states that it is unlawful for a [Redacted] to “[e]ngage in a type of business respecting the selling or exchanging of vehicles for which he is not licensed.”

WHEREFORE, the Notice of Deficiency Determination Refund Denial dated September 3, 2008, is APPROVED, AFFIRMED, and MADE FINAL.

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

DATED this _____ day of _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, 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.
