

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21529
[Redacted])	
)	DECISION
Petitioner.)	
_____)	

On May 30, 2008, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted], [Redacted] (taxpayer) proposing sales and use tax, penalty, and interest for the period of April 1, 2004, through March 31, 2007, in the total amount of \$177,901.

On July 2, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on January 27, 2009.

The taxpayer is a [Redacted] that sells both [Redacted]. The only issue that the taxpayer protested was the imposition of sales tax on sales of [Redacted] who claimed to be nonresidents.

Sales to [Redacted] are exempt under federal law as long as the sale takes place [Redacted]. Idaho sales tax rule 107.08 (IDAPA 35.01.02.107.08) states:

08. Sales to American Indians. An enrolled American Indian tribal member may buy a motor vehicle exempt from tax *if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation.* The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (Emphasis added.)

Sales of motor vehicles to nonresidents are exempt under Idaho Code § 63-3622R. Subsection 63-3622R(a)(2) states that, to qualify for the exemption, the buyer must title and register the

vehicle in another state, the buyer must not use the vehicle in Idaho for more than sixty days in any twelve month period, and that the vehicle is not required to be licensed under the laws of Idaho.

The taxpayer argues that it is not required to collect tax on these sales because it had exemption claim forms for most of the sales in question. The auditor imposed tax on many of the sales, in spite of the exemption forms, because:

A. In the case of [Redacted] sales, there was insufficient proof of delivery to the [Redacted], and

B. In the case of sales to [Redacted], there was evidence in the file that the buyers were Idaho residents and that they had kept the vehicle in Idaho for more than sixty days after purchase.

To support its argument the taxpayer cites Idaho Code section 63-3622, which states:

63-3622. Exemptions -- Exemption and resale certificates -- Penalties. (a) To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate.

(b) An exemption certificate shall show the purchaser's name, business name and address (if any), address, and signature and the reason for and nature of the claimed exemption.

(c) A resale certificate shall be signed by and bear the name and address of the purchaser or his agent, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold or rented by the purchaser in the regular course of business. A resale certificate relieves the seller from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds a permit provided for in this section, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent

in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax.

(d) A seller may accept an exemption or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. A seller need not accept an exemption or resale certificate that is not readable, legible or copyable.

(e) Any person who gives an exemption or resale certificate with the intention of evading payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(f) An exemption or resale certificate shall be substantially in such form as the state tax commission may prescribe. The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale. Unless the purchaser has an exemption or resale certificate on file with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally requires on sales invoices, purchase orders, or other sales documentation.

(g) It shall be presumed that sales made to a person who has completed an exemption or resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.

The taxpayer argues that Idaho Code subsection 63-3622(a) provides that the sales are presumed to be exempt because the taxpayer had the buyers fill out the appropriate exemption claim form. The [Redacted] purchasers filled out a Form ST-133, and the [Redacted] filled out a

Form ST-104MV. Moreover, Idaho Code subsection 63-3622(d) states that “when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption.”

On the other hand, the auditor felt that the sales are taxable as “a matter of law,” in which case, under Idaho Code subsection 63-3622(g), the presumption would not apply.

These subparts of the statute are not entirely consistent. On one hand, if the purchaser provides a certificate, the seller has no duty or obligation to determine the validity of the claimed exemption, even if the purchaser improperly claimed the exemption. In contrast, a seller must collect the tax if the sale is taxable as a matter of law, even if the purchaser has filled out the exemption certificate claiming the exemption. In interpreting statutes, all words of the statute must be harmonized and read together. All sections of the applicable statute must be read together to determine the intent of the legislature. *Davaz v. Priest River Glass Co., Inc.* 125 Idaho 333, 870 P.2d 1292 (1994). If the statute is ambiguous, then it must be construed to mean what the legislature intended for it to mean. *Miller v. State* , 110 Idaho 298, 715 P.2d 968 (1986). To determine that intent, not only are the literal words of the statute examined, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history. *Lopez v. State Industrial Special Indemnity Fund*, 136 Idaho 174, 30 P.3d 952 (2001).

In considering the interpretation of Idaho Code section 63-3622, the Commission must consider the language of the statute by giving effect to every section, and construing each section so that it is harmonized with the other section of the statutes. When considering these factors, it is clear that the legislature intended a low threshold for the acceptance of certificates by sellers. Unless the transaction is taxable as a matter of law, the seller has no duty or obligation for the

collection of tax. This means that unless the facts show that the seller knows unequivocally that the buyer's purchase is taxable, or if the representations on the invoice and certificate disclose that the claim of exemption is invalid as a matter of law, the certificate will relieve the seller from any potential liability. The seller can rely on the representations of the buyer, even if the representations are not reasonable, and the seller has no duty to question or challenge the representations. The seller can only be held liable if the seller's actual knowledge is such that he knows the buyer cannot claim the exemption at the time of sale, or if the purchase is taxable as a matter of law.

In this case, the seller would know whether it delivered the [Redacted]. The taxpayer maintains that it did so. To complete a Form ST-133, an [Redacted] must sign a statement the [Redacted], he must provide [Redacted] identification, and must swear that he took delivery [Redacted]. Thus, the sale is presumed not taxable. The Commission does not have any evidence to show that delivery did not occur within the boundaries of [Redacted]. Since the taxpayer had Forms ST-133 for all [Redacted] sales, the taxpayer is relieved of any responsibility for collecting the tax.

As for sales to [Redacted], the taxpayer could not have known at the time of sale that the buyer would not take the vehicle out-of-state, as required by Idaho Code section 63-3622R. Once again, the taxpayer may rely on the completed exemption certificates and is not responsible for collecting tax.

It is possible, or even likely, that all of these sales were actually taxable. Under Idaho's statutory scheme, however, the Commission can not hold the seller responsible for the tax. The Commission then, if it is to collect the tax, must collect it from the buyer.

In some cases, the seller did not have an exemption claim form to document the exempt sale. These sales are presumed taxable, and the taxpayer has not offered any other evidence to show that they are exempt. The taxpayer is therefore being held liable for the tax on these sales.

WHEREFORE, the Notice of Deficiency Determination dated May 30, 2008, is MODIFIED, and as MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$51,134	\$2,557	\$18,905	\$72,596

Interest is calculated through June 19, 2009, and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

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

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.
