

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21727
[Redacted],)	
)	DECISION
Taxpayer.)	
)	
)	
)	

On November 20, 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] (taxpayer) proposing sales and use tax, penalty, and interest for the period of January 1, 2003, through December 31, 2005, in the total amount of \$203,639.

On January 22, 2009, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on July 15, 2009.

[Redacted]. The taxpayer has raised several issues with respect to the audit. The main issue was the imposition of tax on sales of vehicles for which the taxpayer had a completed resale or exemption certificate to document the exemption.

Exemption and Resale Certificates

The Idaho Sales Tax Act states that all sales are presumed taxable unless an exemption applies. Idaho Code § 63-3622 provides retailers with specific methods to document exempt sales:

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 § 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. A buyer claiming the exemptions provided by Idaho Code § 63-3622R, must fill out a Form ST-104MV. Idaho Code § 63-3622R provides exemptions for sales of motor vehicles to nonresidents and sales of large trucks used in interstate commerce. Retailers buying for resale or purchasers claiming some other exemption must fill out a Form ST-101.

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.”

The auditor believed that many of the vehicles that the taxpayer sold exempt were taxable as “a matter of law,” in which case, under Idaho Code § 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 § 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 statute. 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.

Sales for Resale

The taxpayer made several sales [Redacted] to purchasers who claimed to be buying for resale. The taxpayer made several exempt sales [Redacted] to people who claimed to be buying for resale but were not in the business of selling [Redacted]. Nevertheless, if the purchaser gives the seller a resale certificate stating that the purchaser is in the business of selling [Redacted], and if the purchaser has a valid Idaho seller's permit number, Idaho Code § 63-3622 relieves the seller of the obligation to collect tax. In this case, one of the purchasers, a heavy equipment dealer, claimed the logging exemption on the ST-101. Since the logging exemption, Idaho Code

§ 63-3622JJ, excludes motor vehicles, the sale is taxable as a matter of law. For the other sales for resale, the purchasers stated that they were in the business of selling [Redacted]. Those sales will be deleted from the amount subject to tax. Since none of the businesses appeared to actually be in the business of selling [Redacted], the Commission will contact the purchasers and review whether they paid the appropriate tax if it was due.

Sales to Exempt Buyers

There were several sales to buyers claiming the exemption for sales [Redacted] to nonresidents, Idaho Code § 63-3624. The Commission is deleting those sales for which the taxpayer has a valid exemption certificate. The Commission will contact these purchasers and review whether the exemption for nonresidents is applicable.

One purchaser refused to sign a certificate. After reviewing all the documents related to this sale, however, it appears that the purchaser was an Idaho resident at the time of sale. Although the sales contract showed an out-of-state address, other records did not. The purchaser's proof of insurance, credit report, and driver's license all showed the same Idaho address. Since a signature is specifically required by the statute, this sale is not being deleted.

[Redacted]. This purchaser claimed an exemption as a nonprofit organization. Since the purchaser is not one of the organizations granted an exemption by Idaho Code § 63-3621, the sale is taxable as a matter of law.

Items Subject to Use Tax

Several manufacturers charged the taxpayer for what appeared to be sales [Redacted]. Since sales [Redacted] that is not custom [Redacted] are taxable, the auditor imposed use tax. The charges were actually for access to the manufacturers' [Redacted] and for training. They are therefore being deleted.

The Commission is also making an adjustment for purchases [Redacted] that were found not to be taxable.

WHEREFORE, the Notice of Deficiency Determination dated November 20, 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>
\$94,823	\$4,471	\$30,716	\$130,280

Interest is calculated through November 2, 2009, and will continue to accrue at the rate set forth in Idaho Code § 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 included with this decision.

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.
