

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
 [Redacted] Petitioner.) DOCKET NO. 21794
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) DECISION
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On June 25, 2007, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted](taxpayer) proposing use tax, penalty, and interest for a transaction that occurred in July 2006 in the total amount of \$7,389.

In correspondence received August 27, 2007, the taxpayer filed a timely appeal and petition for redetermination. After extensive follow-up suggested by the taxpayer’s petition letter, the Bureau found no reason to change its conclusions and transferred the case file to the Legal and Tax Policy Section on March 20, 2009. The Commission then wrote two letters informing the taxpayer of his rights to an informal hearing. The first was mailed on April 9, 2009, and the second was mailed on August 10, 2009. There was no response to the first letter, and the second letter was returned as undeliverable.

BACKGROUND

According to the Tax Discovery Bureau, the taxpayer registered [Redacted] as the owner and builder [Redacted], and was issued a certificate of ownership on July 11, 2006. On April 12, 2007, that [Redacted] was sold or transferred [Redacted].

The taxpayer was not registered with the state of Idaho as a retailer, and Idaho income tax records for the relevant period do not appear to show income [Redacted]. Therefore, the Bureau found no exemption from tax for the taxpayer's acquisition [Redacted].

RELEVANT TAX STATUTES

In Idaho, the sale of tangible personal property is taxable unless an exemption applies. There is an exemption from tax for purchases when the buyer intends to hold the goods in question for resale (Idaho Code § 63-3609). If the seller of goods fails to, or cannot, charge sales tax and no exemption applies, the buyer is obligated to pay a use tax directly to the state (Idaho Code § 63-3621). All states with a sales tax have a complementary use tax. Both taxes have the same rate.

FINDINGS FROM ADDITIONAL RESEARCH

No evidence was presented to show that the taxpayer either paid sales tax on his purchases of parts necessary to build [Redacted], or paid a use tax to the state thereafter. The taxpayer told Bureau staff that he did not own [Redacted] but was building it for another person. Thus, the taxpayer was claiming an exemption as a reseller [Redacted].

Failing to see any irregularity with documents [Redacted] that certified the taxpayer's ownership, the Bureau issued a Notice of Deficiency Determination that was subsequently protested.

However, the Bureau continued to seek information [Redacted] to see if he could substantiate the taxpayer's claim to be a retailer. If the taxpayer was a retailer, he would not owe a tax on the purchases required to assemble [Redacted], and [Redacted] might owe tax on his subsequent purchase pending an investigation of the circumstances.

In correspondence to the Bureau, [Redacted] claimed that his company is an [Redacted] dealer, that it has owned [Redacted] since April 2007, and that [Redacted] has never been in Idaho while in its possession. The span of time from the taxpayer's registration of ownership, July 11, 2006, to its transfer to another owner, April 12, 2007, suggested to the Bureau that the taxpayer built [Redacted] for his own use rather than for the purpose of resale.

While the gathered evidence cast doubt that [Redacted] was the aircraft owner in July 2006 and that the taxpayer was the manufacturer and retailer of the craft, the Bureau nevertheless investigated the taxpayer's claim that he was required to be listed as the owner despite serving in the role as a manufacturer.

In its research, the Bureau found that [Redacted] regulations require that the assembly [Redacted] must be by the owner when [Redacted] built for the education or recreation of its owner. If [Redacted] being built by someone other than the owner, the builder must be employed by the manufacturer (Code of Federal Regulations, Title 14, § 21.191(g), Experimental Certificates). The Bureau notified the taxpayer of this requirement on two occasions, September 25, 2008, and January 8, 2009, and gave the taxpayer the opportunity to provide evidence that [Redacted] was the owner while [Redacted] being built. Competent evidence would include a contract between the parties, payments received by the taxpayer for labor, parts purchases [Redacted], and any document attesting to his legal ownership.

CONCLUSION

The taxpayer has not shown convincingly that he was in the business of building and selling [Redacted], and he has not shown that someone other than himself was the owner [Redacted] in question while he was building it. Given this lack of evidence and the time span between the certification [Redacted] by the taxpayer and the transfer to a new owner, the

Commission reasonably asserts that the taxpayer built it for his own use initially, though he eventually sold it. There being no exemption from tax under these circumstances, the Commission upholds the Bureau's findings.

The taxpayer has not provided the Commission with information to establish that the amount asserted in the Notice is incorrect. As a result, the Commission will uphold the Notice dated June 25, 2007.

A determination of the State Tax Commission is presumed to be correct (*Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 1984), and the burden is on the Taxpayer to show that the deficiency is erroneous (*Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 Ct. App. 1986).

Interest and penalty were added to the tax liability per Idaho Code §§ 63-3045(6) and 63-3046(c) respectively.

WHEREFORE, the Notice of Deficiency Determination dated June 25, 2007, is hereby APPROVED, and as APPROVED, is AFFIRMED and MADE FINAL, in accordance with the provisions of this decision.

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>
\$5,340	\$1,335	\$1,484	\$8,159

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.

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.