

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
 [Redacted]) DOCKET NO. 22258
)
 Petitioner.) DECISION
)
)
 _____)

On August 27, 2009, the staff of the Sales, Use, and Miscellaneous Tax Audit 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 the audit period April 1, 2006, through March 31, 2009, in the total amount of \$26,178.

In correspondence dated September 23, 2009, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing by telephone with the taxpayer’s representative on November 23, 2009. The Commission upholds the audit findings for the reasons that follow.

BACKGROUND AND AUDIT FINDINGS

The taxpayer, with headquarters in Idaho, is a construction company specializing in [Redacted] installation. During the period under audit the taxpayer had contracts both in and outside of Idaho. The taxpayer is registered as an Idaho retailer.

The taxpayer has paid approximately 60 percent of the amount asserted in the Notice. In its protest letter, the taxpayer limits its dispute to three findings that are the subject of this decision.

In separate transactions, the taxpayer purchased two highway-legal motor vehicles that have attached [Redacted] suitable to its business. The purchase of each vehicle was at out-of-state locations and, according to the taxpayer, they have never been in Idaho; however, the

taxpayer titled and registered each vehicle in Idaho, and the applications for title carry the word “Exempt [from sales tax].” The auditor held these two vehicle purchases subject to tax because they are titled and registered in Idaho, and no valid exemption applies to their purchase. The taxpayer believes that tax is not owed because neither vehicle has ever been in Idaho and says it plans to pay Idaho tax on the fair market value when it later enters Idaho.

In another transaction, the taxpayer purchased a [Redacted] According to the auditor’s conversation with one of the [Redacted] taken to Arizona. The auditor held this purchase subject to tax because the equipment was delivered to the taxpayer in Idaho and no tax exemption exists. The taxpayer claims an exemption, stating that the equipment is for use solely outside of the state.

AUDIT PROTEST AND ANALYSIS

The two motor vehicles titled and registered in Idaho: When a motor vehicle owner applies for title and registration in an Idaho county, the assessor’s office will collect a tax unless the registrant shows adequate proof that: (1) tax was paid upon purchase in Idaho, (2) tax was rightly paid in another state, or (3) the registrant applies and qualifies for a valid exemption.

The owner of a motor vehicle or trailer required to be registered by the laws of this state shall, upon demand, furnish to the officer issuing such registration, satisfactory evidence that any sales or use tax to which such motor vehicle or trailer is subject has been paid to this state before any such registration shall be issued (Idaho Code § 63-3623(m)).

Vehicles Purchased from Out-of-State Dealers. Title applications for vehicles purchased from out-of-state dealers must be made according to Idaho Transportation Department instructions... If sales tax was correctly paid to a dealer in another state, a credit is allowed against sales or use tax payable to Idaho... (IDAPA 35.01.02.106.04).

The taxpayer stipulates that the vehicles were not purchased in Idaho and admits that tax has not been paid in any other state. The auditor’s notes indicate that one of the motor vehicles,

a [Redacted]. The auditor examined a [Redacted] exemption certificate signed by the taxpayer stating that the [Redacted], was delivered to Arizona.

According to the auditor, the titles for application carry an “exempt” indicator. Specifically, one application says “Interstate Commerce” and the other says “Interstate Truck.” The Commission presumes the taxpayer sought an exemption based on the following procedure used by a county assessor’s office during the titling and registration process:

If no tax has been paid, or proof cannot be provided to the satisfaction of the Assessor or ITD [Idaho Transportation Department] that an exemption from the tax exists, the taxpayer will be required to:

- (a) Pay the tax to the Assessor and apply for a refund to the State Tax Commission, if he feels the transaction is not subject to the tax; or
- (b) Obtain a written clearance from the Tax Commission prior to applying for title at the office of the Assessor (State of Idaho Motor Vehicle Procedures Guide, Idaho State Tax Commission, Paragraph 305 dated 03/2002).

An exemption, commonly referred to as the “International Registration Plan (IRP) Exemption” exists for vehicles used in interstate commerce if certain qualifications are met:

- (c) Sale or lease of **motor vehicles** with a maximum gross registered weight over twenty six thousand (26,000) pounds, which **shall be immediately registered under the international registration plan**, whether or not base plated in Idaho, and the sale or lease of trailers which are part of a fleet of vehicles registered under the international registration plan when such vehicles and trailers are substantially used in interstate commerce. If such a motor vehicle or trailer is not substantially used in interstate commerce during any annual registration period under the international registration plan, it shall be deemed used in Idaho and subject to the use tax under section 63 3621, Idaho Code. For the purpose of this subsection, "substantially used in interstate commerce" means that the vehicles or trailers will be part of a fleet with a minimum of ten percent (10%) of the miles operated by the fleet accrued outside of Idaho in any annual registration period under the international registration plan (Idaho Code § 63-3622R(c). Emphasis added).

The taxpayer did not register the vehicles under the IRP, one of the requirements noted above for the exemption. The taxpayer has not refuted this. Further, there is no provision in the

Idaho tax code or the Motor Vehicle Procedures Guide to exempt from tax a vehicle that is registered and titled in Idaho for use outside of the state.

The [Redacted] purchase: In Idaho, the sale of tangible personal property is taxable unless an exemption applies (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 the sales tax and the use tax have the same rate.

It is undisputed that the [Redacted] was purchased from an out-of-state vendor and that it was shipped to the taxpayer's Idaho business location. Since Idaho sales tax was not collected on the sale, the taxpayer owes use tax unless an exemption applies.

The taxpayer claims an exemption from use tax stating the [Redacted] will be used solely outside of Idaho:

Storage -- Use (a) The term "storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

.... (c) **"Storage" and "use" do not include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state**, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside the state, and thereafter used solely outside the state (Idaho Code § 63-3615, in relevant part, emphasis added).

The auditor questioned whether an Idaho-based taxpayer with contracts both inside and outside the state could state with absolute certainty required by the previously cited code if a long-lived asset would irrevocably remain outside of the state. The taxpayer's protest letter leaves sufficient doubt against the certainty required. In the taxpayers protest letter dated September 23, 2009 the taxpayer states, in general reference to the three items that are the

subject of this decision, "...the equipment was not consumed in Idaho. At a later date, this equipment may be moved into Idaho."

A penalty was added to the tax liability:

If any part of any deficiency is due to negligence or disregard of rules but without intent to defraud, five percent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency (Idaho Code § 63-3046(a)).

The Commission upholds this penalty in light of the taxpayer's failure to pay tax upon registering the two motor vehicles in Idaho as previously discussed.

Interest was added to the tax liability per Idaho Code §§ 63-3045(6). Interest is accrued through March 31, 2010.

WHEREFORE, the Notice of Deficiency Determination dated August 27, 2009, 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>
\$22,626	\$1,131	\$2,421	\$26,178
		Net of payment and interest adjustment	<u>(16,532)</u>
			<u>\$ 9,646</u>

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 _____ 2010.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2010, 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.

Copy Mailed to:

[Redacted]