

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22480
)
)
Petitioner.) DECISION
)
_____)

On October 14, 2009, the staff of the Sales and Use 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 January 1, 2008, through January 31, 2008, in the total amount of \$2,217.

In correspondence dated December 15, 2009, the taxpayer filed a timely appeal and petition for redetermination. At the taxpayer’s request, the Commission held an informal hearing on June 10, 2010. For the reasons that follow, the Commission upholds the audit findings.

BACKGROUND

The following are undisputed facts. The taxpayer bought a tractor backhoe on June 1, 2007, from an Idaho equipment dealer who shipped the backhoe to the taxpayer in Oregon. For taxable year 2007, the taxpayer filed Form 43, a part-time Idaho residency individual income tax return. For taxable year 2008, the taxpayer filed Form 40, Idaho residency individual income tax return.

The taxpayer owned a mining claim in Oregon and said that he bought the equipment for use at the mining site. A few months after the purchase, in September 2007, he sold the mining claim and subsequently used the equipment in Oregon to provide excavation services. For taxable year 2007, the taxpayer filed a Schedule C with his federal return under the label

“Excavation Contractor.” The schedule showed \$1,000, and the taxpayer said the income was for backhoe excavation services he provided.

In December 2007, the taxpayer brought the backhoe to his new personal residence in Idaho. The Bureau held the backhoe’s fair market value subject to use tax for taxable year 2008, the year the taxpayer claimed the sale of the asset as well as the recapture of depreciation on his federal income tax return.

APPLICABLE TAX LAW

In Idaho, the sale of tangible personal property is taxable (Idaho Code §§ 63-3612(1) and 63-3619). The sale of tangible personal property by an Idaho vendor with delivery by the vendor to a point outside of Idaho, or arranged by the vendor to be shipped by common carrier to a destination outside of Idaho, is not an Idaho sale and is therefore not subject to tax (Idaho Code § 63-3622Q). Thus, the seller was not required to collect sales tax when the backhoe was delivered to Oregon.

However, the use of goods brought into Idaho is subject to a use tax unless an exemption applies:

Imposition and rate of the use tax -- exemptions An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired ... at the rate of six percent (6%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property ... (Idaho Code § 63-3621).

“Storage” and “use” in Idaho are given specific definitions in the tax code:

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.

(b) The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in

the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax, unless such property would be exempt to the titleholder under section 63 3622D, Idaho Code, except that the term "use" does not include the sale of that property in the regular course of business.

(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).

PROTEST SUMMARY

The taxpayer said he had no intention of using the equipment in Idaho but brought it to his new residence in this state for safekeeping and to sell it to cover a financial emergency. He doesn't believe that storage of the backhoe in Idaho for the purpose of selling it constitutes a taxable use. He is willing to pay a tax on the fair market value of the equipment for the two months it remained in Idaho prior to the sale.

ANALYSIS

Without stating it specifically, the taxpayer is asking for a resale exemption for the storage of the equipment in Idaho. As noted previously, "use" does not include holding property for "the sale of that property in the regular course of business" (Idaho Code § 63-3615(b)). While the taxpayer's intention may have been to sell the equipment, the equipment was not part of a resale inventory, and he did not sell backhoes in the regular course of business. Rather, the taxpayer was a contractor improving real property. "All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable.... (Idaho Code § 63-3609(a)). As evidenced by his 2007 Schedule C, the taxpayer was in the business of providing excavation services. His 2008 federal income tax return reveals that the backhoe was a

depreciated business asset. The taxpayer brought the equipment to Idaho when its most recent use was to provide services for which he was paid.

No exemption exists under these circumstances as “It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state” (Idaho Code § 63-3621(h)). Further, since no sales or use tax was rightly paid to another jurisdiction (Oregon has no sales or use tax), tax is owed in Idaho (Idaho Code § 63-3621(j)).

Rather than be assessed an amount of tax based on the fair market value of the equipment when it entered Idaho, the taxpayer proposes that he be taxed on a value computed for the time the backhoe was in Idaho up to the day the taxpayer sold it. Therefore, he is asking that an approximate two-month fair rental value be taxed as an alternative to the liability imposed by the auditor.

There is precedent and statutory authority for this treatment under circumstances that are not evident in this case:

Use tax on transient equipment. (a) As used in this section, the term "transient equipment" means tangible personal property which is:

- (1) Subject to use tax in this state; and
- (2) Eligible for depreciation under the federal internal revenue code and actually depreciated on the owner's federal income tax return; and
- (3) Present in this state for a cumulative period of time totaling not more than ninety (90) days in any consecutive twelve (12) months. For purposes of this subsection, any part of a day is one (1) day.

(b) **In the case of transient equipment owned and operated by a nonresident of this state**, the use tax imposed by section 63 3621, Idaho Code, may be the lesser of the amount of tax computed upon:

- (1) The value of the propertyor
- (2) The fair rental value of the property during the time the property is located in Idaho (Idaho Code § 63 3621A, emphasis added).

Furthermore, Sales Tax Administrative Rule 073 states:

01. Equipment Brought into Idaho. Equipment or other tangible personal property brought or shipped to Idaho by residents or nonresidents is presumed to be for storage, use, or other consumption in this state. Generally, tangible personal property is subject to use tax on its fair market value when it is first used in Idaho. Special rules apply to transient equipment present in Idaho for ninety (90) days or less in any consecutive twelve (12) month period. See Section 63-3621A, Idaho Code, and Subsection 073.03 of this rule. ...

02. Substantive Use. Any substantive use of the property in Idaho is sufficient to subject the property to use tax. Use is defined in Section 63-3615, Idaho Code, and Rule 072 of these rules. The use tax does not apply to the use of items purchased before July 1, 1965, or the use of items excluded from tax by Idaho Code.

03. Transient Equipment. Transient equipment means equipment that is: owned by the user, which is a business based in another state; a depreciable asset for income tax purposes and treated as such on the owner's income tax returns; brought to Idaho and kept here for ninety (90) days or less in any consecutive twelve (12) months; and either was not taxed in another state or, if tax was paid to another state, the amount paid was less than the amount of Idaho use tax due (IDAPA 35.01.02.073.01 - .03).

The preceding quotations from the tax code and administrative rules emphasize that the transient equipment treatment for taxes is available only to non-residents. The taxpayer entered the state as a new resident and is not entitled to characterize the backhoe as transient equipment. In fact, the tax code lists several exemptions from sales and use tax for new residents entering the state, but business assets are not included:

The use tax herein imposed shall not apply to the use of household goods, personal effects and personally owned vehicles or personally owned aircraft by a resident of this state, if such articles were acquired by such person in another state while a resident of that state and primarily for use outside this state and if such use was actual and substantial (Idaho Code § 63-3621(l)).

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed this addition and found it to be appropriate per Idaho Code §§ 63-3621, 63-3045(6), and 63-3046, Idaho Code. Interest is accrued through November 30, 2010, and continues to accrue until the tax liability is paid.

WHEREFORE, the Notice of Deficiency Determination dated October 14, 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>
\$1,632	\$408	\$255	\$2,295

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.
