

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 22607
)
)
Petitioner.) DECISION
)
_____)

On January 14, 2010, 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 May 1, 2007, through May 31, 2007, in the total amount of \$1,504.

On February 6, 2010, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on June 15, 2010.

The only issue is the imposition of use tax on the purchase of a used [Redacted]. Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. The use tax is a complementary tax to the sales tax. It applies when the buyer does not pay sales tax to the seller at the time of purchase.

On May 21, 2007, the taxpayer and his brother, [Redacted], purchased a 2004 [Redacted] in [Redacted], Idaho. The sales invoice indicated that both the taxpayer and [Redacted] were the purchasers. The taxpayer borrowed money from [Redacted] bank to pay for the [Redacted]. The promissory note showed that the taxpayer was the primary borrower and [Redacted] was the co-borrower. [Redacted], one of which named the taxpayer as the buyer and the other named [Redacted]. The address on both forms was [Redacted] address in [Redacted].

[Redacted].

Since [Redacted] was the only name on the title, the motorcycle became part of his estate. Apparently, the taxpayer had some difficulty convincing [Redacted] heirs that he was the owner. The controller of [Redacted] provided a letter, dated April 10, 2009, describing the “incorrect ownership information” on the [Redacted] title application. He also pointed out that the taxpayer had made all the loan payments. He sent a second letter, dated June 17, 2009, stating that [Redacted] could not give him any further assistance in changing the title. Eventually, [Redacted] heirs agreed to release the title to the taxpayer. The taxpayer then registered the motorcycle in Idaho.

The taxpayer stated that he made his brother a co-borrower because he wanted to help him reestablish his credit rating. He also stated that he had never lived at the address written on the [Redacted] and did not sign it. He did not state that the address was that of his brother. It is not clear whether the taxpayer or [Redacted] signed the [Redacted]. It is a fact, however, that [Redacted] did not charge tax on the sale of the motorcycle. The signature, is therefore, not relevant.

The taxpayer objected to the imposition of the 50 percent fraud penalty and interest. Since it appears that the taxpayer intentionally titled and registered the motorcycle in [Redacted] for the purpose of avoiding payment of the sales tax, the Commission believes the fraud penalty is justified. Interest is required under Idaho Code § 63-3045.

The Commission acknowledges that the taxpayer paid the amount of the tax due, \$898, on February 10, 2010. The amount of the NOD will be modified to show the partial payment.

WHEREFORE, the Notice of Deficiency Determination dated January 14, 2010, is MODIFIED, and as MODIFIED, is 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> |
|------------|----------------|-----------------|--------------|
| \$157 | \$449 | \$5 | \$611 |

Interest is calculated through July 30, 2010, 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 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.
