

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
)
 [Redacted],) DOCKET NO. 22791
)
)
 Petitioner.) DECISION
)
 _____)

On February 23, 2010, 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 the audit period of January 2009, in the total amount of \$1,581.

In correspondence received April 12, 2010, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to two hearing rights letters dated June 1, 2010, and July 14, 2010. The Commission, having reviewed the file, including the letter of protest and the applicable tax law, herein upholds the Notice for the following reasons.

BACKGROUND

According to the Bureau, the taxpayer is an Idaho resident and has been since at least 2004. On January 20, 2009, he titled and registered a vehicle in Idaho without paying use tax. The Bureau was made aware of this transaction and sent correspondence to the taxpayer to determine if the vehicle was purchased before the taxpayer became a resident, if tax was rightly paid to another jurisdiction, or if another exemption applied. The taxpayer did not respond to the inquiry and, after examining the available facts and determining that there was no applicable exemption, the Commission issued the Notice referred to previously.

APPLICABLE TAX LAW

In Idaho, the sale, purchase, and use of tangible personal property is taxable (Idaho Code §§ 63-3612(1), 63-3619, and 63-3621) unless an exemption applies. The relevant exemption in this decision is commonly called the “new resident exemption,” codified in Idaho Code § 63-3621, and cited below in relevant part:

(1) 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, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial. For purposes of this subsection, "resident" shall be as defined in section 63-3013 or 63-3013A, Idaho Code.

The auditor’s examination concluded that the taxpayer bought the vehicle new on March 21, 2005, from an [Redacted] dealership. His name is on the purchase agreement, as well as an [Redacted] address, but he was an Idaho resident at the time.

PROTEST SUMMARY

In the protest letter, the taxpayer says the tax is not due because the vehicle was, “used and parked in Oregon for several years before it was licensed in Idaho.” He then lists three Oregon addresses, one of which was named on the vehicle purchase agreement. In separate correspondence dated March 25, 2010, the taxpayer states that he purchased the vehicle for his mother who lived in Oregon and didn’t take possession until she passed away.

In a telephone discussion with Bureau staff, the taxpayer said the vehicle was used in Oregon for the transportation of his sister, who needed frequent trips for medical care services. In the same discussion, he later disclosed that he also used the vehicle as part of his business, [Redacted].

ANALYSIS

In 2005, the year in which the taxpayer purchased the vehicle in question, the taxpayer filed an Idaho individual income tax Form 40 listing himself as head of household with two dependents. He claimed a \$60 grocery credit (3 exemptions X \$20). Form 40 must be filed by people who are full-time residents with dependents. The return shows no income tax paid to other states. The return also shows a net operating loss carry forward which is presumably from the [Redacted] business that is on record with the Idaho Secretary of State's office. Without evidence to the contrary, the Commission concludes that the taxpayer was an Idaho resident when he purchased the vehicle.

Although the taxpayer says he bought the vehicle for his mother and didn't take possession of it until her death, the available information indicates that the taxpayer was, and continues to be, the legal owner of the vehicle since its purchase.

While the taxpayer may have brought the vehicle into Idaho prior to January 2009, the Commission can only conclude with certainty that it was brought to this state in the month when the taxpayer applied for an Idaho title and registration. Therefore, the Commission agrees with the Bureau's assertion of its fair market value at that time and its application of tax based on that amount (IDAPA 35.01.02.073.01).

In his protest, the taxpayer mentioned a financial hardship that would prevent him from paying the liability. Since the taxpayer did not respond to the hearing rights letters, the Commission has no information on this claim and therefore cannot comment further on it.

In addition to the tax, the Commission upholds the imposition of interest and penalty. Interest is accrued to December 31, 2010, and continues to accrue until the liability is paid (Idaho Code §§ 63-3045(6) and 63-3046).

WHEREFORE, the Notice of Deficiency Determination dated February 23, 2010, 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:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$1,203	\$301	\$118	\$1,622

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.
