

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 23044
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On March 17, 2010, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayer). The Notice proposed additional use tax, penalty, and interest in the total amount of \$2,800 for taxable period January 2008. The taxpayer filed a timely appeal and petition for redetermination on May 5, 2010, and requested an informal conference, which was held on October 26, 2010. The Commission, having reviewed the audit file and considered the information obtained at the informal conference, hereby upholds the audit findings for the following reasons.

**Background**

On January 3, 2008, the taxpayer appeared at a county assessor's office in Idaho to title a [Redacted] in the business name of [Redacted], as a tax-exempt, dealer-owned vehicle held for the purpose of resale. At that time, the vehicle had an Oregon title, dating from July 18, 2007, and an Oregon license plate. Further, the title was in the taxpayer's individual name and listed the taxpayer's Idaho residential address.

According to the taxpayer, the vehicle was titled in his personal rather than business name due to an error by his lienholder, [Redacted]. A handwritten letter from [Redacted], dated June 30, 2008, apologizes for this administrative error, although the letter is not from [Redacted] itself. [Redacted] is an Oregon auto dealer that took the taxpayer's car on consignment in June

2007. There is no indication it had any relationship to the financing of the vehicle. The taxpayer states he now has financing with a new bank in his business name. However, the most recent Oregon title with a new lienholder includes the taxpayer's individual name in addition to his business name. The vehicle continues to be registered as well.

When the taxpayer obtained an Oregon title in his own name he was a resident of Idaho. He filed Idaho resident income tax returns from 1998 through 2008, the latest year examined. He has an Idaho driver's license and has renewed it since 1990.

According to the Idaho Secretary of State, the taxpayer's business entity, [Redacted], was dissolved on December 5, 2005, and was reinstated on July 8, 2010. Therefore, [Redacted] was not in business on the day the taxpayer applied for an Idaho title and a tax exemption for the vehicle in question. There was a dealership under the taxpayer's individual name, but the license was suspended in July 2008.

### **Audit Findings and Applicable Tax Law**

The Bureau concluded that the taxpayer was an Idaho resident at the time he brought the vehicle to this state, titled in his own name, and that no exemption applied for his use of the vehicle. Since the vehicle was titled in Oregon, its purchase or use was not taxed previously because Oregon does not have a sales or use tax. Idaho Code § 63-3621 imposes a tax on tangible personal property used in this state, including motor vehicles, unless an exemption applies or tax was rightly paid in another state.

### **The Protest**

In his May 5, 2010, protest letter, the taxpayer refers to the vehicle in the present tense as belonging to his dealership (he cites a specific assigned number). He believes that the tax liability is the result of a misunderstanding, beginning with [Redacted] error in placing his

individual name on the title. His attempt to bring the vehicle to Idaho and title it under his business name was unsuccessful because the county assessor would not “recognize the dealership and refused to change the names.” He states that he felt forced to return the vehicle to Oregon and try to sell it there.

### **Analysis**

A reseller of goods may purchase those goods exempt from tax, because sales for resale are not retail sales subject to tax (Idaho Code § 63-3609). In the instant case, the titles for the vehicle have, at all relevant times, included the name of the taxpayer as an individual. A title is *prima facie* evidence of ownership. The taxpayer has, at all times, claimed that his business, [Redacted], is the dealership entity, but the inclusion of his individual name on the title makes him an owner. As both the owner and an Idaho resident who brought the vehicle to this state, he cannot claim an Idaho reseller exemption and, therefore, owes use tax. Further, the vehicle is registered to drive with Oregon plates:

Idaho dealers may title motor vehicles held for resale in their dealer name to ensure clear title to the vehicle. However, the vehicle cannot be registered in the dealer’s name. If the dealer applies for registration, tax applies (IDAPA 35.01.02.108.02.b.).

It is not clear if the taxpayer sought a registration when he applied for title in Idaho. Had he applied for registration, tax would apply, as noted above. Had he not applied for registration, he could not have driven the vehicle because he was not an Idaho dealer at the time and would therefore not have had legal access to dealer’s plates.

The foregoing is sufficient for the Commission to conclude that the asserted liability is appropriate. Since the taxpayer believes that an administrative error placing his individual name on the title is the sole reason for the deficiency, the subject is worthy of discussion.

The Commission is reluctant to agree with the taxpayer that [Redacted] made an error by placing the taxpayer's individual name on the title. As noted earlier, there is no bank letter or title document admitting or correcting an error. Additionally, the subsequent Oregon title continues to include the taxpayer's individual name.

The Commission notes from its experience that dealers deemed to have insufficient financial stability will be required by a lienholder to title the vehicle in the personal name as well as a corporate or LLC name so that there is recourse against the individual should the business fail to fulfill its debt obligation.

From the strict perspective of sales tax, ignoring for the sake of argument any requirements that the Idaho Department of Transportation may have with respect to motor vehicle dealers, an individual can sell vehicles as a business as long as he or she collects tax appropriately. However, he cannot buy tax-exempt resale inventory and title it in a name other than the dealer's alone.

The Commission's imposition of interest and penalty are appropriate per Idaho Code §§ 63-3045(6) and 63-3046(c) and (g). Interest is accrued through June 17, 2011. It continues to accrue until the tax liability is paid.

WHEREFORE, the Notice of Deficiency Determination dated March 17, 2010, is hereby MODIFIED, and AS SO 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>
\$2,016	\$504	\$380	\$2,900

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 \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2011, 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.

\_\_\_\_\_