

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23157
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On May 5, 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] (taxpayers) proposing use tax, penalty, and interest for the period April 2009 in the total amount of \$1,880.

In correspondence dated June 25, 2010, the taxpayers filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayers at their request on May 6, 2011. Having reviewed the file, the letter of protest, and the information obtained at the hearing, the Commission hereby upholds the Bureau's findings for the following reasons.

**Background and Audit Findings**

The taxpayers are a mother and her son. On February 20, 2008, they jointly purchased a [Redacted] motorhome at an Idaho vehicle dealership, using a vehicle valued at \$15,000 and titled in the name of the mother as a trade-in. At the time of purchase, the son claimed Oregon residency on a sales tax exemption claim form, ST-104MV. Accepting this form as proof of an exemption, the dealer did not charge Idaho sales tax.

According to the Bureau's research, however, the mother was an Idaho resident at the time of purchase. She filed Idaho resident income tax returns between 2006 and 2008 and for

part of 2009. Her federal income tax returns had an Idaho address for 2006 through 2008, and there was an Idaho address on her employer's wage statement, W-2, from 2006 through 2009.

The mother owned property in [Redacted] County and claimed the homeowner's exemption from 2006 through 2009, the last year researched. Her son became a 50 percent owner of this property on September 9, 2008, and the two continued to claim the property as their primary residence.

Her son as well is presumed to have been an Idaho resident at the time the two taxpayers purchased the motorhome. In addition to his joint home ownership and claim of a homeowner's property tax exemption available only for one's primary dwelling place (Idaho code § 63-602G(2)(a)), his [Redacted] income tax returns, W-2s, and miscellaneous income statements (1099s) from 2006 through 2008 had an Idaho address, although there is no record of his having filed Idaho individual returns.

Based on the evidence of Idaho residency at the time of purchase, the auditor held the motorhome purchase subject to use tax because sales tax was not paid to the vendor and no exemption from tax applied.

#### Relevant Idaho Sales and Use Tax Statutes

In Idaho, the sale of tangible personal property is taxable unless an exemption applies (Idaho Code §§ 63-3612 and 63-3619). Idaho also imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. Payment of sales tax to a vendor extinguishes the use tax liability. Therefore, purchases subject to use tax are only taxable when the purchaser buys goods without paying tax to the seller at the time of sale. The use tax rate is the same as the sales tax rate, and a recent sales price is presumptive evidence of the value subject to tax (Idaho Code § 63-3621(a)).

Motor vehicles are tangible personal property and their sale and use is subject to tax unless an exemption applies. By providing the vehicle dealer with Form ST-104MV, the taxpayer (in this case, the son) was claiming an exemption available to non-residents:

There are exempted from the taxes imposed by this chapter:

(a) Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), motorcycles intended for off-road use and snowmobiles, for use outside of this state even though delivery be made within this state, but only when:

(1) The motor vehicles, vessels, ATVs, motorcycles intended for off-road use, snowmobiles or trailers will be taken from the point of delivery in this state directly to a point outside this state; and

(2) The motor vehicles, vessels, ATVs, motorcycles intended for off-road use, snowmobiles and trailers will be registered immediately under the laws of another state, will be titled in another state if required to be titled in that state, will not be used in this state more than sixty (60) days in any twelve (12) month period, and will not be required to be titled under the laws of this state (Idaho Code § 63-3622R).

#### Taxpayers' Protest

The son maintains that he was living in Oregon at the time he jointly purchased the vehicle and that he did not file income tax in 2008. He claims that he was transitory in Oregon, at times living with a relative. He also maintains that his mother never used the vehicle and that for some time he used it as a residence in Oregon. He asserts that his mother's co-ownership stems from his attempt to have his assets avoid probate, as he had (or has) cancer and there was uncertainty about his future when the purchase was made. He also claims his co-ownership of the Idaho residence with his mother is for estate planning purposes rather than an indication of residence.

#### Analysis and Conclusion

The son's defense that his mother did not use the vehicle and that her name was on the title for estate planning purposes is not relevant to the determination of this tax liability as there is no statutory authority for allowing an out-of-state residency exemption under the stated

circumstances. The Commission concludes that the Bureau has sufficient evidence that the mother and son were residents at the time of purchase, based on the forgoing evidence, and that tax is due on that certainty.

The Bureau's imposition of interest and penalty are appropriate per Idaho Code §§ 63-3045(6) and 63-3046(c) and (g). Interest is accrued through January 31, 2012. It continues to accrue until the tax liability is paid.

WHEREFORE, the Notice dated May 5, 2010, is APPROVED, and AS APPROVED, is 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>
\$1,434	\$359	\$ 184	\$ 1,977

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' 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.