

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 23224  
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 )  
Petitioners. ) DECISION  
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\_\_\_\_\_ )

On June 1, 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 a transaction that occurred on or near August 18, 2004, in the total amount of \$13,153.

On August 2, 2010, the taxpayers filed a timely appeal and petition for redetermination. The Commission sent two standard hearing rights letters dated December 10, 2010, and June 28, 2011. The second letter was marked “Final Notice.” The taxpayers did not respond to [Redacted].

Applicable Tax Statute

Idaho Code § 63-3621 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 or thereafter. The use tax rate is the same as the sales tax rate and is due on the fair market value of the property. A recent sales price is presumptive evidence of the market value. The sales price subject to tax can be reduced by a trade-in, defined as merchandise accepted in payment of other merchandise, as long as that merchandise becomes part of the resale inventory of the seller (Idaho Code § 63-3613(b)2 and IDAPA 35.01.02.044.01).

### Background

The Bureau researched the ownership of a [Redacted] in [Redacted], Idaho. According to the auditor, a sales contract from [Redacted] provided by the taxpayers, indicates a sales price of \$246,000 for a [Redacted]. The contract also shows a trade-in valued at \$110,000. This leaves a taxable amount of \$136,000.

The [Redacted] retailer is not an Idaho vendor registered to collect and remit sales tax. However, the invoice shows \$2,500 added as "IDAHO TAX", but the description is "LICENSING" rather than sales tax. The appropriate sales tax on \$136,000 is \$8,160 (a 6 percent tax rate was in effect at the time of the purchase), and this is the amount the auditor included on the Notice.

The auditor contacted the [Redacted] retailer and was told that sales tax could be added to a sales contract because tax is often financed with the cost of [Redacted] itself. However, the retailer said there is an expectation that an out-of-state purchaser pays the tax directly to its home state because the retailer is not registered to collect another state's tax. The retailer's reply was general, however, and not specific to the invoice in question. There was no explanation as to why the tax noted on the invoice in question is labeled as "LICENSING."

### The Taxpayers' Protest

According to the taxpayers, a married couple at the time of purchase, they were misled by the boat dealer regarding tax. They said that the dealer told them that due to the value of [Redacted] it would require "documentation" with the [Redacted] and that the sales tax would be less than they (the taxpayers) believed. The taxpayers admit in retrospect that this was a serious error. They were (at the time of their protest) divorced and their finances were "in chaos." They requested an abatement of the penalty and interest.

## Analysis

The Bureau's research concludes that the [Redacted] retailer has not remitted sales tax to Idaho on the transaction at issue, nor did it label the invoice line in question with "sales tax" and enrich itself with tax revenue it was obligated to remit to Idaho.

Use tax is due unless the following conditions are met:

Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that **a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers** (Idaho Code § 63-3621(a); emphasis added).

Although there is an inclusion of tax on the invoice, the retailer and the taxpayers do not share similar facts regarding why it is there, what it represents, and who should have remitted it to whom. There is a presumption that the taxpayers would realize that the tax on \$136,000 is greater than \$2,500, that the purchase was not made in Idaho, and that the amount was not an Idaho sales tax. Since the evidence is not strong in this case that the taxpayers believed they were making a payment of Idaho sales tax to a retailer, and the invoice does not meet the requirements of the statute cited above to extinguish the use tax liability, the Commission upholds the audit finding that tax is due. "The legal incidence of the tax is intended to fall upon the buyer..." (Idaho Code § 63-3619 and IDAPA 35.01.02.068.07).

The penalty imposed by the auditor is a non-filer penalty that constitutes a maximum 25 percent of the tax (Idaho Code § 63-3046(g)). The Commission uses its discretion in this decision to reduce the penalty to 5 percent for negligence (Idaho Code § 63-3047).

THEREFORE, the Notice of Deficiency Determination dated June 1, 2010, is MODIFIED and, as MODIFIED, 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>
\$8,160	\$408	\$3,447	\$ 12,015

The penalty was determined pursuant to Idaho Code § 63-3046(c) and (g). Interest is calculated through December 31, 2011, 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 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.  
  
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