

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23254
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On April 16, 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 taxable period 1993 through 2008, in the total amount of \$21,361.

In correspondence dated June 8, 2010, the taxpayer filed a timely appeal and petition for redetermination. At the taxpayer's request, the Commission held an informal hearing on October 22, 2010. For the reasons that follow, the Commission modifies the audit findings.

**BACKGROUND**

During the period under audit, the taxpayer periodically brought [Redacted], each time claiming to be a new resident. He had not paid tax on the purchase or use of these vehicles in any other state. Stating on each occasion that he was a new resident in Idaho, he requested exemptions that were granted by the county assessors where he submitted his paperwork.

A Bureau auditor reviewed the taxpayer's automobile registration and applicable history concluding that for most of the registration periods he was in fact domiciled in Idaho and did not qualify for the exemption he sought. The decision to impose tax was based on a totality of facts relevant to the auditor's understanding of the term "domicile." These facts included filing income taxes, obtaining a driver's license, voter registration, and attesting to Idaho state residency on a fishing license application. The Bureau concluded that the taxpayer committed

fraudulent acts with the intent to evade tax when he sought and recieved the new resident exemptions.

Accordingly, the auditor imposed tax on the estimated fair market values of the [Redacted] in question when they were brought to the state. Further, the auditor imposed a fraud penalty and statutorily required interest.

#### APPLICABLE TAX LAW

In Idaho, the use of tangible personal property is taxable, although the use tax is extinguished if the buyer paid a sales tax to an Idaho-registered vendor upon purchase or an amount at least equal to the Idaho tax to another state, if it was rightly due in that jurisdiction (Idaho Code §§ 63-3621).

However, there are exceptions to the law. The relevant exception, or exemption from tax, follows:

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. (Idaho Code § 63-3621(l)).

The fraud statute reads as follows:

If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid (Idaho Code § 63-3046(b)).

Further, in cases where the facts disclose a false or fraudulent act with the intent to evade tax, the limitations on assessment for issuing a Notice do not apply (Idaho Code § 63-3633(d)).

## PROTEST SUMMARY

The taxpayer states that there is no definition of “residence” in the Idaho Sales Tax Act but that it is defined elsewhere in the Idaho Code. All of those definitions depend upon the definition of “domicile,” which itself is not defined in the Idaho Code. Domicile is defined in an income tax administrative rule. Summarizing from the taxpayer’s protest, domicile is defined as a person’s true, fixed, and permanent home....the place to where the individual intends to remain and to which the individual expects to return when he leaves without intending to establish a new domicile elsewhere.”

The taxpayer contends that he was never domiciled in Idaho and, therefore, could be considered a part-year resident upon consecutive trips to this state for the purpose of registering and titling his personal motor vehicles. For those days when he was not in Idaho, he would be a non-resident until his return for another purpose. For years, he was a resident of multiple jurisdictions at different times and even at the same time.

## ANALYSIS

The taxpayer views this tax case as hinging on the definition of domicile and whether he ever acted in a way that established an Idaho domicile. The auditor’s view, with which the Commission concurs, is that through multiple declarations and actions over time the taxpayer was domiciled in Idaho and must, therefore, accept the tax burdens that accompany such behaviors. Even assuming that the taxpayer failed to achieve Idaho domicile status by his behavior, he nevertheless was an Idaho resident on the multiple occasions when he sought a new resident exemption.

However, the Commission does recognize that in judging this and similar issues by examining the totality of facts, there can be reasonable doubt cast on the earlier years of the audit

period where there is less certainty that the taxpayer sustained Idaho residency. The Commission further determines in this case that there is insufficient evidence to infer or prove a fraudulent intent to evade tax. For that reason, the Commission holds that for vehicle transactions dating only from 2004 to the end of the audit period, the taxpayer was an Idaho resident and could no longer claim a new resident exemption for the legal avoidance of use tax. The liability and penalty is adjusted consistent with this conclusion.

The Commission's imposition of a negligence penalty and interest are appropriate per Idaho Code §§ 63-3045(6) and 63-3046. Interest is accrued through February 28, 2011, and continues to accrue until the tax liability is paid.

WHEREFORE, the Notice of Deficiency Determination dated April 16, 2010, is hereby MODIFIED, and as MODIFIED, APPROVED, 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 tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$4,103	\$204	\$985	\$5,292

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.

\_\_\_\_\_