

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23375
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On March 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] (taxpayer) proposing use tax, penalty, and interest for the January 2010 tax period in the total amount of \$1,321. In a letter dated July 6, 2010, the taxpayer filed a timely appeal and petition for redetermination. On October 13, 2010, the Commission sent a standard hearing rights letter to the taxpayer. The taxpayer declined a hearing but sent documents to the Commission in defense of his opinion. The Commission, having reviewed the file and additional documents, and with an understanding of the facts and the applicable tax law, upholds the audit findings for the following reasons.

**BACKGROUND**

The Bureau imposed a use tax on the fair market value of a motor vehicle as of January 2010. The audit file documents two reasons for the imposition. First, the Bureau contends that the taxpayer is a resident of Idaho. Additionally, the Bureau concluded that the taxpayer's use of the vehicle in Idaho exceeded 90 days during a consecutive 12-month period. The significance of these conclusions is discussed in a later section of this decision.

The facts leading up to the decision to impose the tax are as follows. According to the Bureau, an Oregon-plated personal motor vehicle was seen parked on a regular basis in a

particular residential area in Idaho. Oregon Transportation Department records show the vehicle is registered to the taxpayer, listing both an Oregon address and an Idaho address.

Additional research revealed that the taxpayer claimed an Idaho homeowner's exemption from 2002 through the present, naming three different Idaho residences during that time. Further, the taxpayer filed Idaho resident returns from 2004 through 2008 and has Idaho source income from that same time period. The taxpayer filed an Oregon non-resident return in 2009. No returns were filed in Oregon for the 2006 through 2007 taxable years.

The taxpayer states that he has three residences; one in Idaho, one in Oregon, and the third in another western state. He also has business property in Oregon. He spends most of his time in Oregon and has four vehicles registered there. He states that his "primary residence" is Oregon. He is registered to vote and has a driver's license in Oregon. He has been called for jury duty in Oregon and has a hunting license from that state. Most of his wealth, still being distributed years after an inheritance, is in Oregon.

During the time period in question, the taxpayer's employment required him to be on the road in the Northwest for a considerable period of time. He co-owned a home with a fiancée in Idaho and recently purchased a home in Idaho with her. He admits that "25-49%" of his time was in Idaho, traveling from Oregon 12-15 times per year and spending many days during each trip.

#### APPLICABLE TAX LAW

Idaho Code § 63-3621 and Idaho Code §§ 63-3621(a) and (j) impose a use tax on the storage or use of tangible personal property in Idaho. The rate of use tax is identical to sales tax, currently 6 percent, and every person storing or using tangible personal property is liable for the tax unless sales tax was paid to an Idaho retailer or was rightly paid to another taxing

jurisdiction. In this case, there is no evidence that tax was paid to another jurisdiction, nor was any such claim made.

Specific to motor vehicles, the Idaho code states the following:

The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months, and which is not required to be registered or licensed under the laws of this state (Idaho Code § 63-3621(k)).

### ANALYSIS AND CONCLUSION

The taxpayer relies on “primary residence” in Oregon as a defense against owing a tax on his use of the vehicle in this state. However, the issue is “residence” rather than “primary residence.” As the taxpayer admits, he has three residences in three states, and spends considerable time in both Idaho and Oregon.

The terms “residency” and “resident” are not defined for the purpose of applying Idaho Code § 63-3621(k), previously cited as the relevant statute in this decision. The facts suggest that the taxpayer has more than one residence in the sense of where he works, votes, drives vehicles, spends leisure hours, and pays taxes. While the taxpayer has significant ties to Oregon, he has undeniably strong Idaho ties. He co-owns property with a fiancée, admits to spending considerable time in this state, and has taken advantage of a homeowner’s exemption from property tax for at least eight years.

A property tax code section requires that in order to receive a homeowner’s exemption, the home must be the primary dwelling place of the owner (Idaho Code § 63-602G(2)(a)). In order to be a “primary dwelling,” it must be “the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning” (Idaho Code § 63-701(8)(a)). While the taxpayer

advances an argument that his Idaho residence and presence is insignificant by comparison to his Oregon ties, his Idaho homeowner's exemption taken for multiple years suggests sufficient connection with Idaho for the purpose of imposing a tax on the use of a vehicle in this state. Further, his admission to a presence in Idaho for more than 90 days in a calendar year with the vehicle in question is in itself a sufficient reason for the liability, assuming the Commission was to deem him a non-resident.

The Commission reiterates that had the taxpayer resided in one of the other 44 states with a sales tax rather than Oregon, he would likely have paid tax to that state upon buying, titling, or registering the vehicle. Under those circumstances he would have received credit against any Idaho tax due. It is the peculiar nature of Oregon, one of two non-taxing states contiguous to Idaho, which requires this decision.

Finally, the Commission takes note that the taxpayer states he was instructed by the Commission to re-file an income tax return to reflect that Oregon was his primary residence. He did so, and now cannot understand why this was not sufficient evidence for the Commission to withdraw the liability. The Commission is aware of the taxpayer's statement, and while not challenging that the taxpayer received such instruction, it has no record of asking him to do so, nor does it know from whom he got those instructions. In the opinion of the Commission, given the totality of the facts, the alternate filing would not be sufficient for the taxpayer to claim he did not owe the tax assessed herein.

WHEREFORE, the Notice of Deficiency Determination dated March 5, 2010, is AFFIRMED, and as AFFIRMED, is 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>
\$1,043	\$261	\$58	\$1,362

Interest is calculated through February 28, 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 taxpayer's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

IDAHO STATE TAX COMMISSION

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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.

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