

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

|                                 |   |                  |
|---------------------------------|---|------------------|
| In the Matter of the Protest of | ) |                  |
|                                 | ) | DOCKET NO. 23400 |
| [Redacted]                      | ) |                  |
|                                 | ) | DECISION         |
| Petitioner.                     | ) |                  |
| _____                           | ) |                  |

On January 12, 2010, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] [Redacted] proposing use tax, penalty, and interest for the period January 2008 in the total amount of \$4,803.

A timely protest and petition for redetermination was filed by [Redacted] the petitioner's registered agent [Redacted]. A hearing was not requested by the petitioner. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

On August 22, 2007, the Idaho Secretary of State received articles of organization [Redacted]. The initial registered agent was [Redacted] and the member of the LLC was also [Redacted]. The annual report for 2008 showed [Redacted] as a member for this LLC.

On July 14, 2009, the tax enforcement specialist (TES) of the TDB identified that a 2008 [Redacted] [Redacted] was being sold on the [Redacted] in the state of Idaho. The Commission's Sales and Use Tax Bureau ran a Motor Vehicle Registration Report to identify the owner of the [Redacted]. The report showed that the [Redacted] was owned by the petitioner, an Idaho LLC.

The petitioner was sent a letter dated December 9, 2009, requesting information to assist the Commission in identifying whether Idaho sales/use tax was due on the sale/use of the [Redacted] in Idaho.

An NOD dated January 12, 2010, was issued to the petitioner because no response was received to the request for documents indicating that either [Redacted] qualified for an exemption to sales/use tax or that sales/use tax had been paid. The tax, penalty, and interest in the NOD were calculated using the sales price on [Redacted].

In the petitioner's protest letter received by fax on March 14, 2010, [Redacted] stated:

I am responding to your allegation at [sic] taxes are owed on a [Redacted]. As I am sure you are aware [Redacted] was Titled and located in [Redacted] for approximately 8 months prior to being transferred to Idaho. Upon [Redacted] coming to Idaho is [sic] was properly titled and registered. According to the department of motor vehicles [Redacted] was exempt from taxes because of the fact that it was in [Redacted] for more than 3 months. I will await your response in this matter.

The TES ordered micro papers on the [Redacted] from the Department of Motor Vehicles. The micro papers showed that the state of [Redacted] issued a title for [Redacted] to [Redacted] on November 26, 2008, and a vehicle inspection report for [Redacted] was performed on March 2, 2009, in [Redacted], Idaho. The Form ST-133CATS was filled out at the Department of Motor Vehicles at the time [Redacted] was titled in Idaho. [Redacted] was the recipient, and [Redacted] was the transferor. The form was filled out stating it was a Capital Asset Transfer and that sales tax had been paid.

The TES sent a letter to the petitioner on February 5, 2010, that stated:

The Tax Commission recently reviewed your protest for the notice of deficiency dated January 12, 2010.

You asked for more time to get proof sales tax was paid on the vessel above. We have not received any documents showing sales tax was paid. If you purchased the vessel from a dealer, they are usually willing to get your purchase documents for you.

Your original protest was that the [Redacted] had been in [Redacted] more than three months before coming into the state of Idaho. When we received micro records from the county it showed that you filled out the ST-133 CATS form. On that form you marked that sales tax had been paid in [Redacted]. Please provide documents showing sales tax was paid. If we do not receive documents we will forward your case onto legal with your protest.

Attached is a form with options for you. Please check one and send back to us by April 30, 2010.

On March 17, 2010, the TES spoke with [Redacted] requesting documents showing sales tax was already paid on the [Redacted]. Idaho Sales Tax Administrative Rule 099.05 states that the transfer is exempt only if the person has paid a sales or use tax when the asset was acquired.

On April 16, 2010, a letter was sent to the petitioner requesting documents to show that the sales tax was paid on the purchase of [Redacted].

The petitioner did not respond to this letter or subsequent phone calls made by the TES.

On October 8, 2010, the Tax Policy Specialist (policy specialist) sent the petitioner a letter to inform it of the alternatives for redetermining a protested NOD. A follow-up letter was sent to the petitioner's LLC member on December 1, 2010. The petitioner's LLC member did not respond to either letter.

Idaho imposes a tax on storage, use, or other consumption of tangible personal property brought into the state, and a recent sales price shall be presumptive evidence of the value of the property. Idaho Code § 63-3621. The use tax is complementary to the sales tax, which imposes tax on the retail sale of tangible personal property within Idaho. It is uncontroverted that the [Redacted] was brought into Idaho and, absent an exemption, or the prior payment of tax to another jurisdiction, the petitioner owed a use tax. There are only two exemptions from use tax for [Redacted] brought

into Idaho.

Idaho Code § 63-3621(k) provides:

(k) 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.

The petitioner does not qualify for the nonresident exemption because it is an Idaho resident limited liability company organized under the laws of this state and would owe use tax on [Redacted] the moment the [Redacted] was brought into Idaho.

Idaho Code § 63-3621(l) provides:

(l) The use tax herein imposed shall not apply to the use of household goods, personal effects and personally owned motor vehicles 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.

The petitioner cannot qualify as a new resident because the exemption is restricted to individuals and does not include businesses. Further, the petitioner failed to show that it rightly paid tax to another jurisdiction.

Based on all the facts cited previously in this decision, the petitioner did not qualify for any exemption from use tax on [Redacted] that it brought into Idaho and is required to pay use tax on that [Redacted].

WHEREFORE, the Notice of Deficiency Determination dated January 12, 2010, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the petitioner pay the following tax, penalty, and interest:

| <u>PERIOD</u> | <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|---------------|------------|----------------|-----------------|--------------|
| Jan-08        | \$3,480    | \$870          | \$652           | \$5,002      |

Interest is computed through June 10, 2011.

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

An explanation of the petitioner's right to appeal this decision is enclosed.

DATED this \_\_\_ day of \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

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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

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