

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

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 23401  
Petitioner. )  
DECISION  
\_\_\_\_\_ )

On July 26, 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 period February 2008 in the total amount of \$7,162.

On September 15, 2010, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on December 2, 2010. At issue in this case is the imposition of use tax on the purchase of a [Redacted].

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. 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.

Idaho Code § 63-3622R(a)(1) and (2) provide a sales tax exemption for the purchase of trailers and vessels by nonresidents who will take them out of state immediately and both register and title them, if required, in the other state. Subsequently, use in this state must be 60 days or less in any 12 month period for the exemption to apply.

The taxpayer and his spouse purchased the boat and trailer at an Idaho dealership on February 11, 2008. The taxpayer signed a Tax Commission form (ST-104MV) claiming a sales tax exemption as a nonresident indicating that the [Redacted] would be taken to Oregon. The Bureau believed the nonresident exemption did not apply and imposed a use tax liability and a 25 percent penalty.

On the buyer's line of the purchase invoice for the [Redacted] the taxpayer's full name is followed by a slash and his spouse's first name. This implies joint ownership of the purchase. Additionally, Idaho and Oregon are both community property states, indicating that the taxpayer is jointly an owner with his spouse. There is no evidence that they had a separate property agreement at the time of the purchase.

Further, the taxpayer's spouse was present at the purchase, and there was a trade-in titled in the name of both individuals. The taxpayer's spouse never claimed to be a nonresident. While there is an Oregon address on the purchase invoice, below that line there is the handwritten word "mailing" followed by the taxpayer's Idaho address.

The taxpayer filed Idaho resident income tax returns for taxable years 2005 through 2009 and Oregon non-resident returns from 2005 through 2007. There were no Oregon income tax filings in taxable years 2008 or 2009.

In March 2007, the taxpayer [Redacted] in Idaho claiming on a Tax Commission form (ST-102) that he was a new resident to Idaho as of June 1, 2006. Between August 2004 and January 2008, the taxpayer [Redacted] in Idaho paying tax on all purchases. Further, the taxpayer used an Idaho address on information returns, including Forms 1065, 1098 and 1099, for taxable years 2005 through 2009. At the time of purchase, the taxpayer owned a residence in Idaho.

Given the preceding evidence that the Commission believes establishes residency well before the time of purchase, the Commission questioned why the taxpayer would seek a non-resident exemption. According to correspondence and information obtained at the hearing, sometime prior to the purchase date, the taxpayer's spouse decided to maintain a separate residence and the taxpayer then bought property in Oregon on October 11, 2007. At that time, the taxpayer intended to establish Oregon as his primary residence. Since the boat and trailer at issue were purchased later than this date, the taxpayer believed he established residency in Oregon and met Idaho's requirements as nonresident.

A taxpayer can have more than one residence. The tax code does not distinguish between primary residence, often referred to as domicile, and residence itself. It merely limits the exemption to non-residents. The Commission believes that there is an abundance of evidence to conclude that the taxpayer was an Idaho resident at least from the time he claimed such in June 1, 2006, and that at the time of purchase he could not claim to be a nonresident. Further, the taxpayer's spouse is both a co-owner in the property and an Idaho resident.

Idaho Code § 63-3621(1) defines residency for the purpose of determining an exemption for new residents who bring with them personal property acquired while residing outside of Idaho. For purposes of that subsection, "resident" is defined in Idaho Code § 63-3013 or Idaho Code § 63-3013A titled "Resident" and "Part-Year Resident," respectively. Thus, for the purpose of Idaho Code § 63-3621(1), residency can also be defined as part-year residency. Part-year residency can include circumstances wherein "the individual did not maintain a permanent place of abode in this state at which his spouse ... or minor or dependent children are present for more than sixty (60) days during any calendar year" (Idaho Code § 63-3013(2)(c)).

WHEREFORE, the Notice of Deficiency Determination dated July 26, 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>
\$5,112	\$1,279	\$922	\$ 7,313

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