

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22992
[Redacted],,)	
)	
Petitioner.)	DECISION
)	
_____)	

On March 11, 2010, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted]. The Notice proposed additional use tax, penalty, and interest in the total amount of \$4,740 for taxable period July 2008. The taxpayer filed a timely appeal and petition for redetermination on April 14, 2010, and requested an informal hearing, which was held on January 26, 2012.

The Commission, having reviewed the audit file and considered the discussion held during the informal hearing, hereby upholds the audit findings for the reasons detailed below.

The taxpayer is [Redacted] company that operated several [Redacted] businesses in Utah, Idaho, and Oregon. The entire Idaho portion of the business was sold to another corporation in July 2009. The taxpayer has not had any active operations in Idaho since that time.

When the business was operational in Idaho, the taxpayer utilized a small fleet of trucks (vehicles) in the regular course of its [Redacted] activities. These vehicles carried equipment and supplies necessary for the various lawn services provided on site at both residential and commercial properties.

The sole audit issue, and consequently the sole issue under protest, is the taxpayer's alleged use of three particular vehicles in Idaho in July 2008. Over the course of several days that month, an employee of the Commission witnessed each of the vehicles in a residential neighborhood in Idaho being used by the taxpayer's employees in the company's [Redacted]

activities. At the time, each of the vehicles displayed [Redacted] license plates. The Commission employee passed along the information to the Bureau who undertook a limited scope audit investigation focused on the use of the vehicles in Idaho.

In Idaho, a purchase of tangible personal property, such as the vehicles in this case, is generally subject to sales tax unless an exemption applies (Idaho Code § 63-3619). If sales tax is not paid on the purchase, and the property is used or stored in Idaho, that use or storage is subject to use tax on the value of the property unless an exemption applies (Idaho Code § 63-3621). Conversely, if sales tax is paid at the time of purchase in Idaho or properly paid when purchased in another state with a sales tax, no use tax will be owed.

As a companion to sales tax, use tax operates very similarly with the same rate and most of the same exemptions. In most cases, if a sale of tangible personal property would have been subject to sales tax in Idaho, use of that property in Idaho would be subject to use tax (assuming sales tax had not already been paid).

During the course of the audit, the Bureau confirmed that the vehicles were owned by the taxpayer in July 2008, and that all three were titled and registered in Oregon at that time. The Bureau also discovered that the vehicles had been sold along with the business in July 2009. In January 2010, the vehicles were registered in Idaho by the new owners.

In an effort to obtain additional information that would be helpful in making its determination, the Bureau corresponded with a director and self-identified “agent” for the taxpayer. Though the agent promised to look into the use of the vehicles in Idaho, he never provided any additional information or documentation. Consequently, the Bureau could not confirm where the vehicles had been purchased or whether sales tax had been properly paid at the time of purchase. In addition, unlike Idaho, Oregon does not have a sales or use tax, so the

taxpayer would not have been required to pay such a tax to that state when it registered the vehicles there.

Without evidence from the taxpayer that sales or use tax had already been paid, or that a tax exemption applied, the Bureau issued the Notice asserting use tax for the taxpayer's use of the vehicles in Idaho in July 2008 as witnessed by the Commission employee. With no purchase documentation available to determine a value upon which to impose the tax, the Bureau estimated the value based on the sales price of a similar vehicle on a popular used car sales website.

The taxpayer protested the Bureau's imposition of use tax for several reasons. First, the taxpayer claimed that the vehicles had been purchased for use in its Oregon operations and that "all assessments" were paid for each of the vehicles at the time of purchase. The protest letter also expressed concern with the lack of evidence put forth by the Bureau in support of its assertion that the vehicles were used in Idaho. The taxpayer pointed out again that the vehicles were registered in Idaho in January 2010, after the taxpayer had already sold the vehicles. Finally, the taxpayer protested the estimated value of the vehicles used by the Bureau asserting that the purchase price was significantly lower.

During the informal hearing, the agent did not raise any new arguments besides those set forth in the original protest letter. In the course of the discussion, the agent agreed that the vehicles may have been used in Idaho for providing [Redacted] to customers prior to January 2010, though he felt that it was likely for short periods of time when demand called for it. However, in a subsequent phone conversation, he contradicted his prior statement when he said that he was fairly certain the vehicles had only undergone routine maintenance during their time in Idaho. He said he wished to look into additional documentation that would give a clearer

picture as to the use of the vehicle, so he asked that the identifying information for each of the vehicles be resent to him as he no longer had any of the pertinent documentation.

The Commission provided the taxpayer with each vehicle's identifying information and granted the taxpayer several months to gather additional documentation. The taxpayer never provided any additional documentation and did not respond to repeated attempts at contact after the hearing.

In reviewing the taxpayer's protest, the Commission notes that most of the points require some supporting documentation which the taxpayer has not provided. For instance, the taxpayer's arguments that sales tax was paid at the time of purchase, or that the Bureau's valuation of the vehicles was overstated, could have both been resolved with the original purchase documents. The only point of protest for which the taxpayer did provide documentation was the registration of the vehicles by the new owners in January 2010. However, this point is inconsequential as the Bureau asserted use tax for a much earlier period when the vehicles were clearly still owned by the taxpayer.

The taxpayer also points out that the vehicles were primarily intended for the [Redacted] operations. While the Commission concedes that this assertion may be true (though no evidence was presented besides the assertion itself), it does not change the fact that the taxpayer used the vehicles in Idaho for some period of time as part of its operations in this state.

Though the Commission appreciates the taxpayer's concerns about the Bureau's reliance on a single source of eyewitness evidence, the taxpayer has provided very little evidence of its own to counter the Bureau's assertion. The primary evidence provided by the taxpayer has been written and oral statements from the taxpayer's agent, some of which seem to agree with the Bureau's assertion that the vehicles were used in Idaho. As noted above, the agent's statements

have even been contradictory at times. Consequently, despite the Bureau's limited evidence, the Commission determines that the taxpayer's evidence is insufficient to overcome the Bureau's assertion that the vehicles were used in Idaho and their use was subject to a use tax.

Finally, the Commission approves of the Bureau's imposition of interest and penalty as appropriate per Idaho Code §§ 63-3045(6) and 63-3046(a).

THEREFORE, the Notice dated March 11, 2010, and directed to [Redacted] is AFFIRMED by this decision.

IT IS ORDERED that the taxpayer pay the following amount of tax, penalty, and interest (calculated through February 28, 2013):

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$3,501	\$876	\$770	\$5,147

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

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

DATED this _____ day of _____ 2012.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2012, 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.
