

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23565
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On January 11, 2011, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayer). The Notice asserted additional use tax, penalty, and interest in the total amount of \$2,536 for taxable period January 2007. The taxpayer filed a timely appeal and petition for redetermination on November 29, 2010. She later requested an informal conference, which was held on September 14, 2011.

The Commission, having reviewed the audit file and considered the information and documentation obtained at the hearing, upholds the audit findings for the reasons detailed below with an adjustment based on documentation presented by the taxpayer.

Background

In January 2007, the taxpayer titled and registered her [Redacted] (vehicle) with a county assessor's office in Idaho. The vehicle was titled in the taxpayer's name only. At the time of registration, the county requested evidence from the taxpayer that sales or use tax had been paid (Idaho Code § 63-3623(m)). The taxpayer acquired the vehicle in Oregon, a state with no general sales tax, so no tax had been paid on the original purchase. When sales tax has not been paid on a purchase of tangible personal property, any use of that property in Idaho is subject to use tax unless an exemption applies (Idaho Code § 63-3621). The taxpayer claimed an exemption available to residents of Idaho on their use of tangible personal property in Idaho, if

the property was purchased in their prior state of residence at least three months before moving to Idaho (Idaho Code § 63-3621(1)). This exemption is commonly called the “new resident exemption.”

In support of her claim, the taxpayer submitted a Form ST-102, Three-Month Exemption Claim, stating she had purchased the vehicle in August 2006 and moved to Idaho in December 2006, a period of time that met the three-month requirement of the exemption. The form explicitly stated “this exemption applies only to new Idaho residents.” In addition, by signing the form, the taxpayer acknowledged that the claim could be “subject to further review by the...Commission” and that “[she] may be required to provide supporting information upon request.” Consequently, the taxpayer was allowed to register the vehicle in Idaho without payment of use tax.

The Bureau received the taxpayer’s registration information in August 2010 to review the validity of the exemption claim. In correspondence with the taxpayer, the taxpayer asserted that she had never been a resident of Idaho, contrary to what she had previously claimed. Based on this information, the Bureau concluded that the taxpayer never qualified for the new resident exemption. Consequently, the Bureau asserted tax on an industry standard estimated retail value as no sales documentation had been provided during the audit.

Summary of the Taxpayer’s Protest

The taxpayer protested the Bureau’s imposition of tax for two reasons. First, she claimed that she never became a resident of Idaho. Second, she claimed she had made no use of the vehicle in Idaho which was subject to tax. For these reasons, she asserted that she owed no use tax.

Informal Hearing

During the informal hearing, the taxpayer further explained her protest. As a nonresident of Idaho, she questioned Idaho's statutory authority to impose a tax on her use of the vehicle in Idaho. She claimed that she used the vehicle less than twenty days a year in Idaho and she did not believe this was sufficient grounds for imposing use tax regardless of whether she met the requirements of the new resident exemption.

The taxpayer also questioned whether the Notice had been issued within the proper period of time. By statute, the Notice must be issued within three years of the due date or filing date of the return on which the use tax should have been paid, unless the taxpayer has failed to file a return, in which case the period is seven years (Idaho Code §§ 63-3633(a) and (c)). The taxpayer stated she filed an Idaho income tax return for the 2007 taxable period. The 2007 return contained a line to report use tax. Consequently, the taxpayer argued that she met the requirement to file a return under the statute of limitations which would limit the period to three years.

Finally, the taxpayer presented documentation showing that the sales price of the vehicle was lower than the amount asserted by the Bureau in the Notice.

Analysis

The taxpayer argued that the Commission lacks the statutory authority to impose tax on the use of property by a nonresident, but the Idaho code imposes a tax on any use of tangible personal property in the state. Any exclusion or exemption from this broad imposition must be specifically granted by statute. Unless the use of the property qualifies for such an exemption, it is subject to tax:

63-3621. Imposition And Rate Of The Use Tax -- Exemptions. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible

personal property acquired on or after October 1, 2006, for storage, use, or other consumption in this state at the rate of six percent (6%) of the value of the property...

...(h) It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state.

Use is specially defined in the sales and use tax code (Idaho Code § 63-3615):

...(b) The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership...

In this case, the taxpayer admits that she used the motor vehicle in Idaho “no more than 20 days a year.” Based on this information, there is no question that the Commission has the authority to impose a tax on the use of this vehicle unless an exemption applies. Of the many exemptions from use tax, only two seem relevant for discussion.

First, the taxpayer claimed one of the relevant exemptions, the new resident exemption, at the time of registration. This exemption has specific requirements which the taxpayer did not meet (Idaho Code § 63-3621(1)):

(1) 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, or military personnel temporarily assigned in this state and spouses who accompany them, 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 taxpayer repeatedly asserted that she has never been a resident of Idaho. Residency in Idaho is one of the requirements. Therefore, the Commission agrees with the Bureau that the use of the vehicle never qualified for this exemption.

Second, the only other exemption that seems potentially applicable is an exemption available to nonresidents who use their motor vehicles in Idaho:

(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 exemption requires the vehicle to be registered in the taxpayer's state of residency. Prior to registration of the vehicle in Idaho, it is likely that the taxpayer's use of her vehicle in Idaho qualified for this exemption. However, upon registration of the vehicle in Idaho, the vehicle was no longer registered in the taxpayer's state of residence and, therefore, the use of that vehicle ceased to qualify for this exemption on that date.

The taxpayer also raised the issue of the statute of limitations. The Bureau asserted that the statute of limitations was expanded to a seven-year period because the taxpayer had never filed a sales and use tax return. The taxpayer disagreed and argued that her 2007 income tax return filing constituted a return for purposes of this statute:

63-3633. Period of limitation upon assessment and collection. Except as otherwise provided in this section:

(a) The amount of taxes imposed by this chapter shall be assessed within three (3) years after the due date of the return or the date the return was filed, whichever is the later...

For the sake of discussion, it seems appropriate to examine the taxpayer's interpretation of this statute.

As already determined, the taxpayer's use of her vehicle in Idaho became subject to use tax when she registered the vehicle in Idaho in January 2007. Therefore, use tax was due on the 2007 income tax return (if not paid previously). The 2007 income tax return was due April 15, 2008, within three years of the Notice issued on January 11, 2011. Even under the taxpayer's argument, the Bureau issued the Notice within the period of time allowed by the statute of limitations.

Under both the Bureau's and the taxpayer's interpretation of the statute of limitations, the Notice was issued within the required period of time. Consequently, the Commission has no need to issue an opinion regarding either interpretation.

With no applicable exemption and no concern with the statute of limitations, the Commission concludes that the vehicle became subject to use tax at the time of registration as asserted by the Bureau. However, the taxpayer has provided sales documentation to the Commission since the Bureau's issuance of the Notice which requires an adjustment to the Notice.

Use tax is imposed on the "value of the property" which is based on a "recent sales price" if available (Idaho Code § 63-3621). The taxpayer provided the sales contract from the August 2006 purchase showing a lower sales price than the Bureau's estimate.

The term "sales price" is a specially defined term for sales and use tax purposes. Certain charges are specifically excluded from the sales price. One of those exclusions reduces the sales price to account for tangible personal property given to the seller in lieu of a cash payment for merchandise, commonly called a "trade in" (Idaho Code § 63-3613(b)(2)):

- (b) The term "sales price" does not include any of the following:
 - ...2. Any sums allowed on merchandise accepted in payment of other merchandise...

In this case, the taxpayer exchanged a used motor vehicle for a reduction in the cash price of the vehicle. This reduction also applies to the sales price subject to tax. Therefore, the Commission adjusts the use tax to reflect the actual sales price from the original transaction. This adjustment is reflected in the figures below.

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

THEREFORE, the Notice dated January 11, 2011, and directed to [Redacted] is AFFIRMED as MODIFIED by this decision.

IT IS ORDERED that the taxpayer pay the following amount of tax, penalty, and interest:

<u>USE TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$915	\$229	\$270	\$1,414

Interest is calculated through May 31, 2012, and will continue to accrue until the entire liability has been 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 _____ 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.
