

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23649
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On April 16, 2010, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayer) proposing sales tax, use tax, penalty, and interest for the period May 1, 2008, through May 31, 2008, in the total amount of \$3,743.

On May 3, 2010, the taxpayer filed a timely appeal and petition for redetermination of the Notice stating that he disagreed with the Notice.

The Commission wrote a letter to the taxpayer on February 1, 2011, advising the taxpayer of his right to an informal hearing. The taxpayer responded in writing on February 28, 2011, but did not indicate whether he would like a hearing. The Commission sent another letter on March 4, 2011, advising the taxpayer again of his right to an informal hearing. To date, there has been no further reply from the taxpayer.

The Commission may issue a decision after forty-two (42) days from the date that the Notification of the Right to Request a Hearing is mailed to the taxpayer, if the taxpayer does not request a hearing (IDAPA 35.02.01.325.08). For the reasons that follow, the Commission upholds the audit findings.

Background and Audit Findings

On May 18, 2008, the taxpayer titled and registered his [Redacted] (vehicle) with the [Redacted] 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 [Redacted], 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(l)). This exemption is commonly called the "new resident exemption."

In support of his claim, the taxpayer submitted a Form ST-102, Three-Month Exemption Claim, stating he had purchased the vehicle in April 2007, and moved to Idaho in August 2007, a period of time that met the three-month requirement for 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 "[he] 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 February 2010, and conducted a review of the exemption claimed. In correspondence with the taxpayer, the taxpayer asserted that he was not a resident of Idaho, contrary to what he had previously claimed when registering the vehicle. Based on evidence from various sources, the Bureau concluded that the

taxpayer was already a resident of Idaho at the time of registration, and did not qualify for the exemption claimed, as he was not a new resident at the time of registration.

Summary of the Taxpayer's Protest

The taxpayer protested the Bureau's imposition of tax, claiming that he was not a resident of Idaho. He states that he does not have an Idaho driver's license, does not own a home in the state of Idaho, and claims to be a [Redacted] resident.

Analysis

The Commission has reviewed the evidence provided by the Bureau and finds that while it does raise questions as to the taxpayer's residency, it does not conclusively establish that he was or ever has been a resident of Idaho. The Commission does, however, agree with the Bureau that the taxpayer did not qualify for the exemption claimed as he was not a resident of Idaho at the time.

The taxpayer has stated that he is not an Idaho resident. 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 specifically 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 titled and registered the vehicle in Idaho, which shows his intent to use the vehicle in this state for more than a transitory use. Based on this information, 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(l)):

(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 taxpayer repeatedly asserted that he has never been a resident of Idaho. Residency in Idaho is one of the requirements. Therefore, the Commission concludes 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 his 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.

With no applicable exemption, the Commission concludes that the vehicle became subject to use tax at the time of registration as asserted by the Bureau. Use tax is imposed on the "value of the property", which is based on a "recent sales price", if available (Idaho Code § 63-3621). In the absence of a recent sales price, the Bureau used the Manufacturer's Suggested Retail Price (MSRP) value, a practice that the Commission finds reasonable.

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 63-3046 (g). Interest is calculated through January 17, 2014, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated April 16, 2010, and directed to [Redacted] is hereby APPROVED, in accordance with the provisions of this decision, and 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>
\$2,739	\$685	\$698	\$4,122

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 _____ 2013.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, 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.
