

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 24760
[Redacted],)	
)	
Petitioner.)	DECISION
)	
_____)	

On October 31, 2011, 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 August 2006 in the total amount of \$19,404. For the reasons that follow, the Commission upholds the audit findings.

On January 2, 2012, the Commission received the taxpayer’s timely appeal and petition for redetermination of the Notice. The taxpayer scheduled an informal hearing with the Commission for July 18, 2012, but canceled that hearing in favor of providing a letter of explanation. The Commission considered that letter, along with the protest and other taxpayer correspondence, in its decision.

Background

According to the auditor, Mr. [Redacted], an Idaho resident and sole member of a [Redacted] LLC, bought a motorhome in [Redacted] State for \$250,906. The bill of sale does not include sales tax. Mr. [Redacted] activities are consistent with Idaho residency: individual resident income tax filings for 1995 through 2010; a current Idaho driver’s license dating back to 2003; recent Department of Fish and Game licensing for multiple years; and, attestation to that agency that he has been an Idaho resident since 1962.

The motorhome purchase invoice, from a vehicle dealer located in [Redacted] State, shows the purchaser to be “[Redacted].” The buyers’ address is [Redacted]. A copy of a check

for \$20,000 made to the order of the vehicle dealer shows the names of the individuals and their [Redacted], Idaho address. It does not show the LLC name.

On the basis of the preceding facts, the auditor concluded that the vehicle was bought and owned by an Idaho resident, and that its use in Idaho was subject to use tax, as sales tax was not rightly paid on the purchase elsewhere.

Relevant Tax Law

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies. If sales tax cannot or is not paid to the vendor, the buyer owes a use tax to the state. Payment of use tax extinguishes the sales tax obligation (Idaho Code §§ 63-3612 and 63-3621).

Motor vehicles are tangible personal property, and their sale and purchase is subject to tax. There is an exemption from use tax for nonresidents who purchase vehicles and use them in Idaho under limited circumstances:

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 use tax herein shall also not apply to any use of a motor vehicle which is registered or licensed under the laws of the state of residence of a nonresident student while such nonresident student is enrolled as a full-time student in an institution of postsecondary education that is both physically located in Idaho and recognized as accredited by the state board of education (Idaho Code § 63-3621.k).

In reference to this statute above, a sales and use tax administrative rule states the following:

A nonresident does not owe use tax on the use of a motor vehicle which is purchased outside of Idaho and titled or registered under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection (107.03.a.), a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. **A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more motor vehicles is not a nonresident.** The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho (IDAPA 35.01.02. 107.03.a, emphasis added) .

Taxpayer's Protest and Follow-up Defenses

In addition to the letter of protest, the taxpayer provided letters dated October 22, 2012, and January 17, 2013. All of the following defenses are from the protest or those subsequent letters. The taxpayer stresses that the LLC is not a resident of Idaho and that the motorhome was duly registered, licensed, and insured in [Redacted]. When not in use, it is stored in [Redacted]. The [Redacted] LLC conforms to the laws of that state for its incorporation and existence.

The taxpayer referenced the U.S. Constitution, specifically Article IV, Section 1, known as the Full Faith and Credit Clause, and placed the following phrase in quotes: "the various states must recognize the legislative acts, public records and judicial decisions of the other states within the United States." The taxpayer contends that the Commission's Notice violates [Redacted] law, as well as the Constitution, subjecting a resident of that state (in this case, an LLC resident) to Idaho's laws.

The taxpayer further contends that because the motorhome's owner is a non-resident, the motorhome would need to be in Idaho more than 90 days in a consecutive 12-month period to

subject it to use tax. The taxpayer states that it was not. Concluding this line of reasoning, the taxpayer believes that the motorhome is not subject to an Idaho tax because Idaho law does not support it, nor is it constitutionally permitted, as referenced in this Idaho sales and use tax statute:

Prohibited taxes. There is exempted from the taxes imposed by this chapter the sale at retail, storage, use or other consumption of tangible personal property or taxable services which this state is prohibited from taxing under the constitution of the United States (Idaho Code § 63-3622A) .

Conceding for the sake of argument that use tax is due, the taxpayer argues that the auditor's calculation is incorrect, arguing that the first use in Idaho was four years later than the purchase date, and that the later date should be used to determine the fair market value subject to tax. The taxpayer further requests that all penalty and interest be abated.

Analysis and Conclusion

This statute excerpt provides the basis for asserting use tax:

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, and a recent sales price shall be presumptive evidence of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property. (Idaho Code § 63-3621).

The taxpayer believes that the referenced date, October 1, 2006, invalidated the auditor's tax assertion, but the Commission refutes this as follows. The liability asserted by the auditor uses August 2006 for the transaction date because the vehicle purchase date on the invoice is August 31, 2006. At that time, the tax rate was five percent, rather than six percent. The auditor should have cited an earlier version of Idaho Code § 63-3621, showing the rate at the time of the transaction and its effective date:

An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after July 1, 2005, for storage, use, or other consumption in this state at the rate of five percent (5%) of the value of the property, ... (Idaho Code § 63-3621. Year 2005 version).

Nevertheless, the liability was calculated at the correct rate, five percent.

As noted, the taxpayer did not pay a [Redacted] State sales tax. The dealer in that state presumably allowed the taxpayer an out-of-state residency motor vehicle purchase exemption extended to residents of [Redacted], among other states (RCW 82.08.0273). As noted previously, [Redacted] does not have a sales tax.

The taxpayer's constitutional argument is not a subject for review in this decision because the Commission does not have authority to review the constitutionality of tax statutes (Wanke v. Ziebarth Const. Co., 69 Idaho 64, 75, 202 P.2d 384, 391 (1949)).

When an Idaho resident forms a [Redacted] LLC for the sole purpose of owning a motor home, automobile, boat, or aircraft, the Commission holds that either the resident or the LLC will owe Idaho use tax. In the present case, the previously cited rule, IDAPA 35.01.02. 107.03.a, is not the only defense of its position.

As the audit evidence shows, the buyers of the vehicle are both the LLC and a married couple, residents of Idaho who hold Idaho driver's licenses. The husband (the sole member of the LLC) is listed as a buyer, as is his wife. Further, their names are separated with "and/or" from which the Commission concludes that the taxpayer's wife has a severable financial interest in the vehicle if she chooses to exercise it. The Commission concludes there is sufficient evidence that the married couple owns the vehicle.

Finally, the down payment for the vehicle was paid from a checking account not in the name of the LLC, but in the name of these individual owners. The evidence suggests that the

LLC and the individuals assets, in this case funds from a checking account, are co-mingled and contradict the view that the LLC and individuals are separate in any meaningful way.

Given the preceding facts, the Commission concludes that the vehicle was purchased by two Idaho residents, a married couple, and contending that the LLC is a legal entity separate from them as justification for not paying tax fails under scrutiny. The LLC is the alter-ego of the taxpayers.

An Idaho court ruled the following with respect to alter-egos:

In order for a corporation to be an alter ego of an individual, there must be (1) a unity of interest and ownership to a degree that the separate personalities of the corporation and individual no longer exist and (2) if the acts are treated as acts of the corporation an inequitable result would follow. *Surety Life Ins. Co. v. Rose Chapel Mortuary*, 95 Idaho 599, 601, 514 P.2d 594, 596 (1973).

The Commission considered whether there was a plausible business purpose for the taxpayer to title and register a motorhome in [Redacted]. As the following illustrates, no convincing information has come to the Commission's attention.

There is no evidence that the LLC files a [Redacted] (or other state's) income tax return showing business revenue from the sale of antiques or other antique-related income, such as appraising or preservation, nor that the motorhome is depreciated for business tax purposes. The taxpayer has not shown that the LLC is advertised or listed as a commercial venture, or that there is a telephone listing or location for the business other than that of the law firm that provided the legal services necessary to establish the LLC.

There is no evidence that the LLC or its sole member owns other business assets, or that there are business assets subsidiary to another corporate structure owned by the individuals. No evidence was submitted from which to determine the motor home's purpose with respect to the antique business.

The Idaho State Tax Commission considers Virginia law to be consistent with Idaho law on this point. A similar set of circumstances arose in Lewis Trucking Corp. v. Commonwealth of Virginia, 207 Va. 23, 147 S.E.2d 747 (Sup.Ct.App.1966). In that case, Marvin Lewis, a Virginia resident, operated a trucking business in Virginia and incorporated the Lewis Trucking Corporation in Delaware with himself as president and sole owner. By registering the truck trailers in Virginia in his own name, and the truck tractors in Delaware in the corporation's name, he was able to circumvent the payment of the higher license fees on tractors in Virginia. The taxpayer admitted that his intent was "to avoid the almost prohibitive Virginia license tax by legal means." Id., 147 S.E.2d at 750. The court concluded, however, that the Lewis Trucking Corporation was nothing more than the alter-ego of the owner-operator, Marvin Lewis, "and that the transfer of title to the vehicles to his paper corporation was merely a device or sham to hide his ownership. It is well settled that such a corporate transfer cannot be used as a method of nullifying established policies of law." Id., 147 S.E.2d at 753.

The taxpayer's argument that the vehicle was never present in Idaho more than 90 days in any consecutive 12-month period and is, therefore, not subject to tax is not a valid defense because that time period threshold applies to non-residents. The Commission views the individual and the LLC to be Idaho residents and there is no evidence to suggest that the individuals have abandoned their Idaho domicile:

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 (Idaho Code § 63-3621(k)).

The current case has its analogy with commercial ventures. A corporation can incorporate in another state, Delaware being a common choice, but where it maintains its

business operations within Idaho, tax applies to its assets however long or short their presence this state. For sales tax purposes, the entity would be considered an Idaho resident.

The LLC that is the subject of this discussion was established by a law office in [Redacted]. This office serves as the registered agent for the LLC. The Tax Commission is aware of the office, where many RV owners have set up LLCs for the sole purpose of avoiding their home state's sales and use tax on vehicle ownership (“[Redacted]. [Redacted].

The taxpayer asked that the interest and penalty added to the Notice of Deficiency Determination be abated. While tax, penalty, and interest can be compromised by the Commission for cause (Idaho Code § 63-3047), interest is applied to tax liabilities by Idaho Code § 63-3045(6) and is warranted.

Regarding the penalty, the Commission believes it is justified when an Idaho resident forms a [Redacted] LLC for the sole purpose of avoiding Idaho taxes:

Penalties and additions to the tax in case of deficiency. (a) If any part of any deficiency is due to negligence or disregard of rules but without intent to defraud, five percent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency....

(c)(1) In the event the return required by this chapter is not filed on or before the due date (including extensions) of the return, there may be collected a penalty of five percent (5%) of the tax due on such returns for each month elapsing after the due date (including extensions) of such returns until the return is filed....

(g) Total penalties imposed under subsections (a), (c) and (d) of this section and under section 63 3033, Idaho Code, shall not exceed twenty five percent (25%) of the tax due on the return (Idaho Code § 63-3046, excerpted in relevant part).

The taxpayer contests the value assigned to the vehicle by the auditor for purposes of imposing use tax. If the vehicle was never brought to Idaho, the Commission would be constitutionally prohibited from imposing an Idaho use tax pursuant to Idaho Code § 63-3621. The Commission reasonably presumes that an Idaho resident would have brought the vehicle to Idaho immediately or soon after its out-of-state purchase. It stretches credulity to believe that the

vehicle was not first in Idaho until four years after its purchase. While the taxpayer states that the vehicle is stored in [Redacted] when not in use, no evidence was provided to substantiate that such a space exists or is the primary storage location for the vehicle.

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be an accurate representation of the taxpayer's use tax liability for August 2006.

Interest is calculated through June 10, 2013, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid. Interest accrues daily at \$1.03. For each day payment is made prior to June 10, 2013, this amount can be subtracted from the amount shown below.

THEREFORE, the Notice of Deficiency Determination dated October 31, 2011, 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>
\$12,545	\$3,136	\$4,388	\$20,069

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.
