

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 25267
Petitioners.) DECISION
_____)

On March 15, 2012, 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 a transaction that occurred in September 2007, in the total amount of \$8,942.

On April 5, 2012, the taxpayer filed a timely appeal and petition for redetermination. The Commission sent a standard hearing rights letter to the taxpayer on October 3, 2012, and, as of the date of this decision, the taxpayer has not replied. For the reasons that follow, the Commission upholds the audit findings.

Background

According to the auditor, [Redacted] bought a vessel on September 28, 2007, under his assumed business name, [Redacted]. As a retailer with the intent to resell goods, the taxpayer did not pay a tax either to the seller or to the county assessor when he titled the vessel under the assumed name. On January 12, 2009, a boat registration was sold to [Redacted] for the vessel at issue. On January 15, 2011, [Redacted] titled the vessel in his personal name and provided information (using the Idaho Transportation Department’s Form 502, Report of Sale and Application for Certificate of Title) indicating tax paid on the vessel, which he valued as \$10,000.

On July 29, 2011, the Bureau sent a letter to the taxpayer questioning the value he assigned to the vessel when applying for a title in his own name. The Bureau requested either justification of the assigned value or tax on the fair market value of the vessel. While the taxpayer responded on August 3, 2011, that he would obtain an appraisal, the Bureau received no further information, so it issued a Notice for a presumed value, giving credit for \$10,000 in taxable value.

Subsequently, several additional facts came to light. The Bureau learned that the vessel included not only the hull, as was previously thought, but twin engines as well. Coincidentally, while searching the Internet for “like-kind” sales offerings in an effort to establish a fair market price, the Bureau found the vessel at issue being offered for sale. As a consequence, the Bureau revised upward the value subject to tax, again giving credit for tax previously paid on \$10,000.

There were additional developments in this case, wherein the taxpayer told the Bureau that the transfer of title from the assumed name to the personal name was in error, followed by the taxpayer changing the title, this time to another but seemingly unrelated business entity. The taxpayer withdrew his earlier attestation of tax paid on the \$10,000 value he assigned. This prompted the Bureau to increase the liability by the same amount.

The full details of additional findings are omitted here, but one finding of particular note is worthy of mention. The Commission learned that the [Redacted] made an \$85,000 secured loan to the married couple named in this decision in April 2008. The loan was secured by the vessel at issue, a trailer, and the two engines mentioned previously.

Tax Law, Analysis and Conclusion

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). An exemption from tax is available for retailers who buy resale inventory (Idaho Code § 63-3609). However,

If a purchaser who gives a resale certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used (Idaho Code § 63-3621(f)).

Based on the preceding evidence obtained by the Bureau, both the Bureau and the Commission have reasonable cause to conclude that while the taxpayer may have purchased the vessel and its accessories with the intent to resell them, it was subsequently converted to personal use, as evidenced by its registration and payment of tax on a \$10,000 value. Additional assertions by the taxpayer that he committed unintentional errors, and his final change of the vessel's title to another business create an inconsistency that the Commission will not ignore.

Nevertheless, the Commission would have preferred to discuss this case with the taxpayer, but the offer of a statutorily available hearing was ignored.

The Taxpayer did not provide evidence adequate to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the Notice. A determination of the State Tax Commission is presumed to be correct (Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 1984) and the burden is on the taxpayer to show that the deficiency is erroneous (Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 Ct. App. 1986.)

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be an accurate representation of the taxpayer's sales and use tax liability for September 2007.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. With respect to the penalty,

If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid (Idaho Code § 63-3046(b), excerpted in relevant part).

Interest is calculated through November 4, 2013, and will continue to accrue by \$.42 per day pursuant to the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated March 15, 2012, 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>
\$5,100	\$2,550	\$1,419	\$9,069

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

An explanation of the taxpayers' 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.
