

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 25512 |
| [Redacted], |) | |
| |) | |
| Petitioner. |) | DECISION |
| _____ |) | |

On September 19, 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), asserting a use tax liability, penalty, and interest for the period October 1, 2011 through October 31, 2011, in the total amount of \$559.

On September 25, 2012, the taxpayer filed a timely appeal and petition for redetermination of the Notice. At the taxpayer’s request, the Commission held an informal hearing on February 27, 2014. Present at the informal hearing were Commissioner [Redacted], Deputy Attorney General [Redacted], and Tax Policy Specialist [Redacted].

The Commission is fully advised of the contents of the audit file, as well as information obtained at the hearing and thereafter, and hereby issues its decision upholding the audit findings.

Background and Audit Findings

According to the Bureau’s research of U.S. Customs records, the taxpayer imported works of art, collector’s pieces valued at \$8,540, from [Redacted] on October 7, 2011, with Idaho declared as the ultimate destination. The Bureau contacted the taxpayer asking for use tax on the purchase price of the collector’s pieces or evidence as to why the use of such goods was exempt from tax. In response, the taxpayer informed the Bureau that all purchases made in [Redacted] are subject to a national goods and services tax of 12.5 percent, which is collected

from the merchant and passed on to the customer and therefore, no Idaho use tax was due. The Bureau determined that no credit should be given for taxes or duties paid to foreign countries to offset Idaho use tax due for collector's pieces received.

Protest

The taxpayer protested the Bureau's determination, relying on Idaho Code § 63-3621(c) which states that "the provisions of this section shall not apply when the retailer pays sales tax on the transaction and collects reimbursement for such sales tax from the customer."

The taxpayer believes that this subsection outlines an exemption for which this transaction would qualify. He says that he provided evidence that the retailer paid sales tax on the transaction (called goods and service tax or GST in [Redacted]) and evidence that the retailer collected that amount from him in excess of the amount due in Idaho.

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 be, or is not, paid to the vendor, the buyer owes a use tax to the state. The sales and use tax rates are identical, and all states with a sales tax have a complementary or compensating use tax requirement. Payment of use tax extinguishes the sales tax obligation (Idaho Code §§ 63-3612 and 63-3621).

The taxpayer's belief that Idaho Code § 63-3621(c) extinguishes the sales or use tax obligation is puzzling, as the code section is focused on the retailer. Subsection (c) reads "the provisions of this section shall not apply when the retailer pays sales tax on the transaction and collects reimbursement for such sales tax from the customer" (Idaho Code § 63-3621(c)). When the state legislature enacted the sales and use tax statutes in 1965, the House Revenue and Taxation Committee addressed the intent of the section:

Section 21 (c). This section is designed to avoid overlap between the provisions of section 19 and section 21 in circumstances in which property is purchased without resale intentions and later sold at retail without having been applied to any other use. In such a case the retailer may collect tax from the purchasing consumer and keep the amount thus collected as reimbursement for his earlier payment. Report in Support of House Bill 222 (May 4, 1965)

The Commission interprets the preceding paragraphs from Idaho Code § 63-3621(c), in concert with the legislative intent of 1965, and generally understands the meaning of words to infer that subsection (c) allows a retailer to take credit for sales tax paid for property that he later resells, even though he did not originally purchase it for resale, as long as it has not been applied to any other use. This section does not speak to a situation where a tax or duty has been paid to a foreign country.

The taxpayer states that he has paid sales tax and argues that the goods and services tax paid to [Redacted] should extinguish the use tax obligation. The Commission acknowledges that, according to Idaho Code § 63-3621(j), this obligation would be extinguished if “the tangible personal property subject to use tax has been subjected to a general retail sales or use tax by another state of the United States in an amount equal to or greater than the amount of the Idaho tax”. The code specifies “by another state of the United States.” This would imply that property subjected to a general retail sales or use tax by any jurisdiction besides another state of the United States would be excluded and that the Idaho use tax obligation would not be extinguished.

Idaho Code § 63-3701 is the statute enacting the Multistate Tax Compact. Article V of the Compact states, in part:

ELEMENTS OF SALES AND USE TAX LAW

Tax Credit

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another State and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the State, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Article II 1 of the Compact states, in part that:

- 1. "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any Territory or Possession of the United States.

The Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the taxpayer's sales and use tax liability for the period October 1, 2011 through October 31, 2011.

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. Interest is calculated through July 31, 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 September 19, 2012, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

| | | | |
|------------|----------------|-----------------|--------------|
| <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
| \$512 | \$26 | \$51 | \$589 |

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 _____ 2014.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2014, 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.