BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 26205
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	

On December 17, 2013, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (Petitioner), asserting sales tax, use tax, penalty, and interest for the periods June 2007 and July 2008, in the total amount of $5,394.

On February 14, 2014, the Petitioner filed a timely appeal and petition for redetermination of the Notice. At the Petitioner's request, the Commission held an informal hearing on August 18, 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

On April 27, 2007, the Petitioner purchased a [Redacted] from an Idaho dealership for $20,650, taking delivery in June 2007. At the time of purchase, the Petitioner signed Tax Commission form ST-104MV, claiming a sales tax exemption as a nonresident and indicating that the trailer would be taken to [Redacted]. On July 31, 2008, the Petitioner purchased a [Redacted] from an Idaho dealership for $38,515, again claiming a sales tax exemption as a nonresident.

Idaho Code §§ 63-3622R(a)(1) and (2) provide a sales tax exemption for the purchase of motor vehicles and trailers in Idaho by nonresidents who will immediately take them out of the state and, if required, both register and title them in the other state. Subsequently, use in this state must be 60 days or less in any 12-month period for the exemption to apply.

The Bureau concluded that the Petitioner did not qualify for the exemption claimed, as he was a resident of the state of Idaho at the time the trailer and vehicle were purchased. The Bureau based this conclusion on several facts. First, the Petitioner filed Idaho resident income tax returns for taxable years 2003 through 2009. The Petitioner also registered for and obtained a resident Hunting/Fishing License in 2005, 2007, and 2011.

The Bureau also found that on June 3, 2005, the Petitioner purchased a home at the address [Redacted] in [Redacted], Idaho, and received the benefit of the homeowner's exemption for that property from 2005 through 2007. On June 8, 2007, the Petitioner purchased another home at the address [Redacted] in [Redacted], Idaho, and received the benefit of the homeowner's exemption from 2008 through 2012. In order to qualify for a homeowner's exemption, the property in question must be the Petitioner's primary dwelling.

Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. Payment of sales tax to a vendor extinguishes the use tax liability. Therefore, purchases subject to use tax are only taxable when the purchaser buys goods without paying tax to the seller at the time of sale. The use tax rate is the same as the sales tax rate and is due on the fair market value of the property. A recent sales price is presumptive evidence of the market value.

Since the Petitioner did not pay sales or use tax on either purchase and the Bureau concluded that the Petitioner did not qualify for the exemption claimed, the Bureau held both the trailer and the vehicle subject to use tax.

Petitioner's Protest

The Petitioner protested the imposition of use tax for both the trailer and the vehicle, claiming that they were purchased online while he was a resident of another state and taken to that state for licensing and titling. He stated that he was not a resident of Idaho at the time he made these purchases and that the Idaho resident income tax returns were filed in error.

The Petitioner stated that he lived in [Redacted], [Redacted], and Idaho and has maintained the same job in [Redacted] since 1996. He lives in a company-supplied duplex when he is working in [Redacted].

The Petitioner also questioned the validity of the Notice because it was not received via certified mail and asked that the Commission respond to this violation of the statute.

Analysis and Conclusion

The Commission agrees with the Bureau that there is an abundance of evidence that the Petitioner was a resident of the state of Idaho at the time both purchases were made.

Regarding the validity of the Notice, the Commission found that the Petitioner was referencing a code section, specifically Idaho Code § 63-3045, that the Idaho Legislature amended in 2012:

> If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, **send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient.** The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's

> right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency. . . . (Idaho Code § 63-3045(1)(a), Emphasis added)

This change to the law went into effect on July 1, 2012. At the time the Bureau issued the Notice on December 17, 2013, there was no requirement to send the Notice by certified mail; therefore, the Notice is valid.

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 June 30, 2015, 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 December 17, 2013, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

TAX	PENALTY	INTEREST	TOTAL
$3,550	$888	$1,137	$5,575

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

An explanation of the Petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

_____

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.

_____