

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-075-163-136
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On March 23, 2016, 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), proposing use tax, penalty, and interest for the period November 1, 2015, through November 30, 2015, in the total amount of \$456.

On May 23, 2016, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission held an informal hearing on November 3, 2016. Present at the informal hearing were Commissioner [Redacted], Deputy Attorney General [Redacted], and Tax Appeals 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 to modify the Notice.

Background and Audit Findings

On occasion, the Bureau is contacted by a taxpayer in need of a provisional sales tax or use tax clearance that will allow that taxpayer to title and register a vehicle without paying sales tax at the time it is titled and registered. In this case, Petitioner contacted the Bureau on November 4, 2015, stating that he needed to title and register a 1994 Road Ranger travel trailer but did not have the money to pay the tax due. Petitioner asserted that he had purchased the trailer for \$6,000 intending to make the trailer his residence, but another opportunity presented itself and he now wanted to sell it. Petitioner told the Bureau that he did not have the money to pay the tax that he owed on the original purchase of the trailer. Petitioner asserted that he would pay the tax

due on the original purchase as soon as he was able to sell the trailer. The Bureau provided Petitioner with the requested provisional sales tax or use tax clearance. Following the receipt of the provisional sales tax or use tax clearance, Petitioner sold the trailer but did not follow up with the Bureau to pay the tax as promised and as a result, the Bureau issued the Notice.

Petitioner's Protest

Petitioner protested the Notice, asking the Commission to cancel it. Petitioner points out, had the trailer been purchased at a dealership it would have been returned and the dealership would have refunded the entire amount including the sales tax. Petitioner asserts that because this was a private party sale, it was held subject to tax on a technicality.

Petitioner sent a second letter that he referred to as an "affidavit of consumer goods use intent." In this document, Petitioner explores the uniform commercial code and argues that no fair legal use has transpired. Petitioner posits that since he never used the trailer for the purpose he intended he should not have to pay tax on the purchase price of the trailer and concludes that the tax bill should be removed from the record.

Relevant Tax Code and Analysis

In Idaho, sales tax is imposed on the purchase of tangible personal property. Idaho Code § 63-3612(1). Idaho retailers collect the sales tax from the customer and remit it to the state. Idaho Code § 63-3619. In this case, Petitioner purchased the vehicle from a private party. Use tax, the complementary tax to sales tax, is due in these circumstances and the Idaho Transportation Department or a county assessor collects it when the new owner makes an application for title and registers the vehicle for road use. Idaho Code § 63-3621; IDAPA 35.01.02.106.05.a. The sales tax and use tax rates are identical, 6 percent of the purchase price. Idaho Code §§ 63-3619 and 63-3621.

The Commission disagrees with Petitioner that his inability to use the trailer in the way he intended makes the acquisition of the trailer non-taxable in some way. The terms “storage” and “use” are broadly defined by Idaho Code § 63-3615. Storage includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside the state of tangible personal property purchased from a retailer. Use includes the exercise of any right or power over tangible personal property incident to ownership of the property. The terms do not include the sale of tangible personal property in the regular course of business or storage or use for the purpose of subsequently transporting the property out of Idaho for use solely outside this state.

Petitioner stored the travel trailer in the state of Idaho from April 24, 2015, until he decided to sell the travel trailer on November 15, 2015. The sale of the trailer itself is an act in which Petitioner exercised right or power over tangible personal property. The Commission agrees with the Bureau that the trailer was both stored and used in the State of Idaho and as a result, use tax is due.

On appeal, a deficiency determination issued by the Tax Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous.” *Parker v. Idaho State Tax Comm’n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010); *Albertson’s Inc. v. State Dep’t of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The Tax Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioner did not provide adequate evidence. As a result, the Commission will uphold the Notice.

Finally, the Commission notes that the Notice asserted a 25 percent non-filer penalty set out in Idaho Code § 63-3046. The Commission has reviewed and finds that the imposition of the

non-filer penalty in this case is inappropriate. The Commission modified the Notice to impose a 5 percent negligence penalty. The Commission reviewed the interest calculated by the Bureau and found it to be appropriate per Idaho Code §§ 63-3045 and has updated interest accordingly. Interest is calculated through July 28, 2017, 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 March 23, 2016, is hereby MODIFIED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$360	\$18	\$21	\$399

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

An explanation of Petitioner's right to appeal this decision is included with this decision.

DATED this _____ day of _____ 2017.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2017, 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.
