

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of

[Redacted]

Petitioner.

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DOCKET NO. 38926

DECISION

On February 6, 2014, 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 sales tax, use tax, penalty, and interest for the period December 1, 2012, through December 31, 2012, in the total amount of \$1,026.

On February 17, 2014, Petitioner filed a timely appeal and petition for redetermination of the Notice. Petitioner did not respond to hearing rights letters sent by the Commission on June 20, 2014, and July 22, 2014. The Commission then made a series of telephone calls in an effort to establish contact with Petitioner. On October 6, 2014, Petitioner stated he had hired a representative, [Redacted], and would forward the appropriate Power of Attorney (POA) form to the Commission. The Commission never received the POA, and telephoned Petitioner on October 15, 2014, to request authorization to speak with Mr. [Redacted]. Petitioner indicated he would submit the necessary POA. On October 31, 2014, the Commission was contacted by Mr. [Redacted], who stated he would consult with Petitioner and advise the Commission if an informal hearing was desired. The Commission has not since been contacted by either Petitioner or Mr. [Redacted].

Petitioner has ceased communications and provided nothing further for the Commission to consider. The Commission, having reviewed the audit file, hereby upholds the audit findings for the reasons detailed below.

### **Background and Audit Findings**

Petitioner lives in Idaho, and has filed Idaho resident income tax returns annually since 2005. On September 30, 2013, the Bureau mailed a letter to Petitioner requesting information regarding a 2009 Kia [Redacted] with Oregon license plates that was repeatedly observed in Idaho. Petitioner responded by email on October 21, 2013, indicating the vehicle belonged to his mother, and he was borrowing the car. The Bureau obtained a copy of the vehicle's Oregon title, which indicated Petitioner was a co-owner of the vehicle. The Bureau then mailed correspondence to Petitioner on November 1, 2013, requesting payment of use tax on the vehicle. Petitioner responded on December 4, 2013, stating he did not own or have possession of such a vehicle. The Bureau conducted additional research, and found the vehicle in question displayed an advertisement for Petitioner's business on its back window. On November 5, 2013, Petitioner traded in the vehicle and received a trade-in allowance on the purchase of a 2012 Ford [Redacted] from a dealership located in Boise.

The Bureau held the value of the motor vehicle, based upon the National Automobile Dealers Association (NADA) Official Used Car Guide (NADA Guide) clean retail price, subject to use tax.

### **Petitioner's Protest**

Petitioner contends the vehicle is owned by his mother, who is not an Idaho resident. According to Petitioner, his mother lent the vehicle to Petitioner and Petitioner's wife during the recent recession. Petitioner stated his name was placed on the title for insurance purposes only, but that his mother paid for the vehicle, and did not transfer any ownership interest to him. Petitioner also disputes the value of the vehicle upon which the Bureau calculated use tax.

### **Relevant Tax Code and Analysis**

Idaho imposes a tax on storage, use, or other consumption of tangible personal property brought into the state, Idaho Code § 63-3621, unless an exemption applies. The use tax is complementary to the sales tax, which imposes tax on the retail sale of tangible personal property within Idaho.

Petitioner utilized the vehicle continuously in Idaho for a protracted period of time, both as a means of transportation as well as mobile advertising for his Idaho-based business. Unless an exemption is available to Petitioner, even a single day of use of the vehicle in Idaho would trigger a use tax liability.

There are only two exemptions from use tax for motor vehicles brought into Idaho. The new resident exemption allows a resident of Idaho to register a motor vehicle in Idaho without paying a use tax if the vehicle was acquired while a resident of another state; the acquisition must occur at least three months prior to moving to Idaho. Idaho Code § 63-3621(l). Petitioner has resided in Idaho continuously since 2005, as documented by his Idaho resident income tax returns. Petitioner's residency in Idaho commenced prior to the acquisition of the vehicle. Therefore, the exemption provided to new Idaho residents does not apply.

An exemption for nonresidents provides that use tax shall not apply to a motor vehicle used in Idaho fewer than 90 days in any 12-month period, provided the motor vehicle is not required to be registered or licensed under Idaho law and is registered under the laws of the owner's state of residence. Idaho Code § 63-3621(k). Petitioner is listed as an owner on the vehicle title, and has been an Idaho resident for the entire period of ownership; therefore, the exemption available to nonresidents of Idaho does not apply.

Finally, Petitioner contested the value of the vehicle subject to use tax, as calculated by the Bureau. IDAPA 35.01.02.106.05a provides that in the absence of a bill of sale, the value established is the clean retail price shown in the most recent NADA Guide. Based upon the available evidence, the Commission cannot determine either the date Petitioner was added to the vehicle's title, or the date the vehicle was first used in Idaho. Petitioner has indicated there is no documentation to show any type of transfer between Petitioner and his mother. The Bureau established the clean retail price of the vehicle, as shown in the NADA Guide on November 13, 2013, and calculated the use tax due based upon this value. In the absence of any additional information regarding the condition of the vehicle or the date Petitioner first used the vehicle in Idaho, the Commission finds the value established by the Bureau to be appropriate.

### **Conclusion**

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) (citing *Albertson's Inc. v. State Dep't of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). The 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.

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner's sales tax and use tax liability for the period December 1, 2012, through December 31, 2012.

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 September 30, 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 February 6, 2014, is hereby APPROVED, 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>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$941	\$47	\$162	\$1,150

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.

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