

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination of)	DOCKET NO. 14347
)	
[Redacted],)	DECISION
)	
Petitioner.)	
_____)	

On October 29, 1999, the Sales Tax Audit Section of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The Notice proposed additional sales and use taxes, related penalty, and interest in the total amount of \$77,796, for the periods October 1, 1992 through September 30, 1999. The taxpayer timely protested and requested a redetermination on December 29, 1999. An informal conference was not requested. The taxpayer did provide written argument in support of its protest. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

The taxpayer at all relevant times was a limited partnership engaged in the business of leasing medical equipment. All equipment it owned was leased to one entity—the [Redacted] (Clinic). The taxpayer paid sales tax on the purchase of the equipment and has not collected sales tax from the Clinic on any of its lease transactions. The audit staff determined the taxpayer purchased the equipment for resale and should have collected sales tax on the leases to the Clinic. The taxpayer did not have a seller’s permit, so the audit staff issued a Notice of Deficiency Determination for a seven-year period pursuant to Idaho Code § 63-3633(c).

The Clinic is a related entity to the taxpayer. The stockholders of the Clinic are all doctors. At all relevant times, the partners in [Redacted] consisted of the stockholders of the Clinic and the office manager employed by the Clinic. The office manager was not a doctor.

During the audit period, there was some change in ownership of the stock of the Clinic and the partnership interests of the taxpayer. However, at all times, with the exception of the office manager, all stockholders were identical to the partners.

The taxpayer argues it is not required to collect tax on the leases because the transactions are exempt pursuant to Idaho Code § 63-3622K. This statute exempts occasional sales of tangible personal property from sales and use tax. The taxpayer contends that subsection (b)(2) of the statute specifically exempts the lease transactions. This section defines as an occasional sale:

Any transfer of all or substantially all of the property held or used by a person in a business requiring a seller's permit when, after such transfer, the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For purposes of this section, stockholder, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having a "real or ultimate ownership" of the property of such corporation or other entity.

The taxpayer argues the statute imposes four requirements, all of which are satisfied in this case. To qualify for the exemption, the taxpayer contends there must be: (1) a transfer; of (2) all or substantially all of the property; (3) by a person in a business requiring a seller's permit; and (4) substantially similar ownership of the property is to that which existed before. The audit staff contends this provision is inapplicable to leases and instead only applies to transactions involving a change in the form of doing business. The Commission rule, IDAPA 35.01.02.099.02, provides:

Change in The Form of Doing Business. A change in the form of doing business qualifies for an occasional sale exemption when the ultimate ownership of the property is substantially unchanged. Example: The incorporation of a partnership qualifies for an occasional sale exemption when substantially all of the property owned by the partnership is transferred to the corporation, and the stockholders of the corporation own substantially the same proportion

of the corporation's stock as they owned in the partnership interest as partners.

The language of (b)(2) has been part of the occasional sale exemption since 1967. Over the years the legislature has broadened the scope of the occasional sale exemption, but has left (b)(2) alone. The Commission's rules since at least 1987 have interpreted (b)(2) of the statute to apply only to changes in the form of doing business.

However, with respect to leases, the Commission has stated that they only qualify for the occasional sale exemption if the transaction meets the requirements of subsection (b)(4). This provision exempts:

The sale, lease or rental of a capital asset in substantially the same form as acquired by the transferor and on which the initial transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, when the owners of all of the outstanding stock, equity or interest of the transferor are the same as the transferee or are members of the same family within the second degree of consanguinity or affinity.

The Commission's rule, IDAPA 35.01.02.099.06, provides an explanation of the statute:

Sales And Rentals to Related Parties. The sale of a capital asset to a related party qualifies for the occasional sale exemption, but only if the seller has paid sales or use tax when the asset was acquired or if the seller acquired the asset from a related party who paid sales tax on acquisition of the asset. Effective January 1, 1996, rentals and leases of capital assets between related parties will also qualify for the occasional sale exemption, but only if the initial related party paid sales tax upon acquisition of the asset. . . .

b. Sales in which the new owners are identical to the prior owners. . . . Example: A and B each own fifty percent (50%) of a partnership. The partnership buys a capital asset and pays sales tax to the vendor. The partnership immediately leases the asset to Corporation C. A owns ten percent (10%) of Corporation C and B owns ninety percent (90%) of Corporation C. Since the percentages of ownership of the partnership and the corporation are not identical, the lease transaction does not qualify for the occasional sale exemption. The partnership

must seek a refund of the sales tax paid on acquisition of the asset and collect and remit sales tax on the lease payments.

The Commission rules exclude the leases from the taxpayer to the Clinic from the occasional sale exemption. The question is whether the Commission has correctly interpreted the statute. The cardinal rule concerning statutory interpretation is that statutes should be interpreted to mean what the legislature intended them to mean and to accomplish what the legislature sought to achieve by their passage. *Smith v. Department of Employment*, 100 Idaho 520, 602 P.2d 18 (1979). Thus, in 1967, did the legislature intend to exempt leases between related parties when it enacted the occasional sale exemption.

The first issue is whether a lease is intended to be a transfer. The occasional sale exemption statute exempts a number of transactions which would otherwise be subject to tax and meet the definition of sale within the meaning of Idaho Code § 63-3612. Some of the subsections exempt transfers [(b)(2) and (b)(3)], others exempt sales [(b)(1), (b)(4), (b)(5), (b)(6) and (b)(7)], and one exempts leases and rentals [(b)(4)]. Because the legislature used different terminology in this statute, it logically makes sense that the legislature intended different meanings for transfers, sales and leases or rentals. It appears the legislature intended a transfer to mean something different than a lease. The Commission in its rules has interpreted transfer to mean a change in the form of doing business or the beneficial interest of the business has changed. Thus, under the Commission's interpretation, there must be a change in the equity provisions of the business, either in form, such as the incorporation of a partnership, or where an owner provides a business with an asset and receives a greater ownership interest. Such an interpretation is consistent with the legislature's precise use of the term "transfer" in the occasional sale exemption statute.

Similarly, to qualify for the exemption in (b)(2), ownership of the property must be substantially similar before and after the transfer. In most leases, the ownership is identical. The lessor is the owner of the property and the lessee simply has a contract right to exercise possession and control over the asset during the lease term. Thus, the statute, if interpreted as suggested by the taxpayer, would result in exemptions for leases between unrelated parties, whereas any other exempt transfer under the statute would have to be between related parties. This reading is broader than that intended by the legislature. The terms of a statutory exemption must be so specific and certain as to leave no room for doubt. *Appeal of Evangelical Lutheran Good Samaritan Society*, 119 Idaho 126, 804 P.2d 299 (1990). Because tax exemptions are a matter of legislative grace rather than a guaranteed right, the exemption must be strictly and narrowly construed against the taxpayer and in favor of the state. *Idaho State Tax Commission v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992). A more narrow reading of (b)(2) limits the exemption to changes in the form of doing business and not to bulk rentals.

THEREFORE, the Notice of Deficiency Determination dated October 29, 1999, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest for the periods October 1, 1992 through September 30, 1999:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$51,839	\$12,961	\$20,471	\$85,271

Interest is computed through September 30, 2001 and will accrue at \$11.36 per day until paid in full.

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 included with this decision.

DATED this ____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2001, 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. [Redacted]
[REDACTED][REDACTED][Redacted] [Redacted] [Redacted]

ADMINISTRATIVE ASSISTANT 1