

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16406
[Redacted],)	
)	DECISION
Petitioner)	
_____)	

On January 16, 2002, the Tax Discovery Bureau of the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing additional use tax, penalty, and interest in the total amount of \$25,801. The taxpayer filed a timely protest and petition for redetermination and requested an informal hearing before the Tax Commission. The hearing was held on June 25, 2002. The Tax Commission, having reviewed the file and the arguments presented by the taxpayer, hereby issues its decision.

The taxpayer is a limited liability company owned by [Redacted] and [Redacted]. The entire deficiency stems from use tax imposed on the purchase of a 1976 Cessna airplane valued at \$370,000. Although the company is in the business of renting aircraft, the taxpayer acknowledges that this particular airplane was not used in any commercial activities.

The taxpayer purchased the plane in June 2000 in the state of [Redacted]. The taxpayer states the plane was flown to the state of [Redacted] and based the plane in [Redacted]. The taxpayer, however, gave an Idaho address for the registration.

The taxpayer argues that the use of the plane in Idaho is exempted by Idaho Code § 63-3622GG. This statute states:

63-3622GG. Aircraft. There is exempted from the taxes imposed by this chapter:

- (1) The sale, lease, purchase, or use of aircraft primarily used to transport passengers or freight for hire. This exemption includes repair and replacement materials and parts installed in or affixed or applied to, or sold, leased or purchased to be installed in or affixed or applied to, aircraft in connection with the

remodeling, repair or maintenance of such aircraft, but does not include tools and equipment utilized in performing such remodeling, repair or maintenance;

(2) The sale, lease or purchase of *aircraft for use outside this state by nonresidents*, even though delivery be made within this state, but only when:

(a) The aircraft will be taken from the point of delivery to a point outside this state;

(b) The aircraft will be registered immediately in another state or nation and not required to be registered under the laws of this state; and

(c) The aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period. (Emphasis added.)

The taxpayer argues that the statute is clear that the residency of the purchaser is not relevant and that the statute applies to purchases by residents and nonresidents alike. The taxpayer also contends that the person who flies the plane, [Redacted], is a nonresident and, therefore, the plane was used outside this state by a nonresident. Finally, although the taxpayer acknowledges that the plane was used in Idaho, he states that it was not present in Idaho for more than 90 days in any twelve month period.

The Tax Commission does not believe that this statute clearly exempts sales to both nonresidents and residents alike. Tax exemptions are never presumed, nor will a statute granting the exemption be extended by judicial construction so as to create an exemption not specifically authorized. *Appeal of Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984); *Sunset Memorial Gardens, Inc. v. State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958). Statutes granting tax exemptions must be strictly construed against the taxpayer and in favor of the state. *Hecla Mining Co. v. Idaho State Tax Comm'n*, 108 Idaho 147, 697 P.2d 1161 (1985); *Appeal of Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984); *Leonard Const. Co. v. State Tax Comm'n*, 96 Idaho 893, 539 P.2d 246 (1975). Furthermore, there is in Idaho a presumption of the correctness of tax assessments. Therefore, when such assessments are assailed, the burden of proof is upon the complaining party. *Appeal of Sears, Roebuck Co.*, 74 Idaho 39, 256 P.2d 526 (1953); *City of Lava Hot Springs v. Campbell*, 125 Idaho 768, 874 P.2d 579 (1994).

As stated previously, the taxpayer maintains that the plane was used by [Redacted] and that Mr. [Redacted] was a resident of [Redacted] at the time of purchase in October 2000. The taxpayer acknowledges that it, [Redacted], was a resident company of Idaho at that time. The company was headquartered in [Redacted] Idaho and it filed an income tax return for the year 2000 with all of the income and expenses attributed to Idaho. Therefore, the Commission does not find Mr. [Redacted] residency relevant. However, the Commission notes that Mr. [Redacted] filed a resident Idaho individual income tax return for the year 2000, that he still owns a home in [Redacted], that his wife lives in [Redacted], and that he renewed his Idaho drivers license in November of the year 2000. For these reasons, it appears that Mr. [Redacted] actually was an Idaho resident when he purchased the plane.

The Tax Commission, furthermore, disagrees with the taxpayer's theory that the exemption applies to sales to both nonresidents and residents alike. The taxpayer supports his argument by stating that: "If the statute only applied to nonresidents who purchased planes for use outside of Idaho, then there would be no need for the statute as the State of Idaho would have no taxing jurisdiction over nonresident activities outside of Idaho." The taxpayer implies that if the exemption was not available to residents, the statute would be superfluous. Although this is a novel argument, the Commission disagrees. The sale of an airplane inside the state would be taxable unless an exemption applied. The taxpayer cites no authority to support the contention that the state does not have the jurisdiction to tax such a sale and the Tax Commission is unaware of any. The exemption, therefore, is not superfluous.

Moreover, the Tax Commission believes that the intent of the statute is clear and that it is intended to apply only to nonresidents. The reason the word "nonresident" was included in the statute was to limit its application to sales to out-of-state buyers. To adopt the taxpayer's

interpretation would render the word “nonresident” meaningless. The statement of purpose for H.B. 602, the bill that created the exemption, enacted in 1994, states:

Current tax law does not exempt the sale of aircraft to out-of-state buyers from the sales tax when delivered in state. To be competitive, Idaho dealers must deliver aircraft at a point out of state. This is a major and unnecessary cost. This bill exempts the sale of aircraft to out of state buyers from the sales tax and allows in-state delivery. This has been reviewed by the Tax Commission and their proposed changes are included. (Emphasis added.)

Therefore, it is the Tax Commission’s opinion that this exemption was always intended to be limited to sales to nonresidents.

For this reason, it is not necessary to address the factual issue of the amount of time the plane was actually used in Idaho. Nonetheless, the Commission notes that the taxpayer maintained no log recording where and when the plane was used. The taxpayer has provided no evidence to support the statement that the plane was not used in Idaho, other than the statement itself. The taxpayer has thus not met the burden of proof on this issue.

The taxpayer also argued in the alternative that, if Idaho Code § 63-3622GG did not exempt the sale, then Idaho Code § 63-3621A applies to the use of the plane in Idaho. This statute states:

63-3621A. Use tax on transient equipment. (a) As used in this section, the term "transient equipment" means tangible personal property which is:

- (1) Subject to use tax in this state; and
- (2) Eligible for depreciation under the federal internal revenue code and actually depreciated on the owner's federal income tax return; and
- (3) Present in this state for a cumulative period of time totaling not more than ninety (90) days in any consecutive twelve (12) months. For purposes of this subsection, any part of a day is one (1) day.

(b) *In the case of transient equipment owned and operated by a nonresident of this state*, the use tax imposed by section 63-3621, Idaho Code, may be the lesser of the amount of tax computed upon:

- (1) The value of the property. A recent sales price shall be presumptive evidence of the value of the property. If there is no recent sales price, the value shall be the fair market value of the property on the date the property is first brought into Idaho; or

(2) The fair rental value of the property during the time the property is located in Idaho. Fair rental value is the amount for which the same or similar property could be leased or rented by the taxpayer from another, unrelated person in the business of leasing or renting such equipment for profit. A taxpayer electing to pay use tax on the fair rental value must establish the value by clear and convincing evidence. Any allowable credit for sales or use taxes paid to another state shall be first exhausted before any tax becomes due under this section.

(c) If transient equipment taxed upon its fair rental value ceases to qualify as transient equipment, it shall be taxed as provided in section 63-3621, Idaho Code, based upon the value at the time the equipment ceased to qualify.

(d) A taxpayer may elect to pay tax on the fair rental value on or before the due date of the first tax return on which the use tax is due. The election need not be filed with the state tax commission but must be reflected in the records supporting the computation of the tax shown to be due on the return. After the due date of the first tax return on which the use tax is due, an election may only be made with the written approval of the state tax commission. The commission shall grant approval only upon evidence establishing that at the time the equipment first became subject to use tax in this state, the taxpayer intended a use for the equipment which would have qualified the property as transient equipment.

(e) Upon discovery of property subject to use tax in this state in regard to which no use tax has been reported, the state tax commission may assert use tax in the manner provided in section 63-3629, Idaho Code, based upon the fair rental value if the commission finds that at the time the equipment first became subject to use tax in this state, the taxpayer intended a use for the equipment which would have qualified the property as transient equipment. (Emphasis added.)

Thus the statute provides that a nonresident may elect to pay use tax on the rental value of capital assets it brings to Idaho for short periods of time. Once again, this statute clearly only applies to nonresidents. Also, once again, the taxpayer is unable to provide any evidence as to the length of time the plane was used in Idaho.

WHEREFORE, the Notice of Deficiency Determination dated January 16, 2002, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest (calculated through August 15, 2002):

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$18,500	\$4,625	\$3,153	\$26,278

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 with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, 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]

ADMINISTRATIVE ASSISTANT 1