

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16133
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On June 13, 2001, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (petitioner), proposing use tax, penalty, and interest for the period July 2000 in the total amount of \$4,011.

On August 15, 2001, a timely protest and petition for redetermination was filed by petitioner. A hearing was not requested. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the deficiency determination.

A U.S. Aircraft Registry Report for July 2000 indicated that [Redacted] of [Redacted], Idaho purchased a 1963 Hughes 269A Aircraft [Redacted] (helicopter) and registered with the Federal Aviation Administration (FAA) as an owner of said helicopter. An Idaho address was provided to the FAA for the registration of this helicopter. Aircraft registered in Idaho are presumed to be present in Idaho.

On November 29, 1999, petitioner applied for and received an Idaho homeowner's exemption from property taxes on his residence at [Redacted] Idaho. In the application, petitioner certified that he was the owner/occupant as of November 29, 1999. Idaho Code § 63-105DD provides that such exemptions may be granted only if the residence is owner occupied and used as the owner's primary dwelling place.

The Commission received records from [Redacted] that indicated the petitioner[Redacted]licensed/registered his 1998 Hyundai in Idaho in December 1999 using his [Redacted], Idaho address.

On August 31, 2000 and January 8, 2001, TDB sent questionnaires to petitioner at his Idaho address requesting information regarding his purchase of the helicopter and payment of any sales or use tax due to Idaho. No response was received to those queries.

On February 13, 2001, a postal tracer was sent to determine if mail was delivered to petitioner at the address used on the previously mailed correspondence. The postal tracer was returned on February 16, 2001, indicating that mail was delivered to petitioner at that Idaho address.

A “final notice” letter was mailed to petitioner on February 26, 2001, requesting the same information as previously requested in the prior correspondence. No response was received.

A NOD was mailed to petitioner[Redacted]on June 13, 2001. The value of the helicopter was established using research conducted on the Internet because the specific make and model of this helicopter could not be found in the Aircraft Blue Book Price Digest. A value of \$60,000 was established for this helicopter.

The petitioner called TDB on June 29, 2001, and left a message indicating that he never completed the purchase of this helicopter and he would send a protest letter to the NOD.

Petitioner’s protest letter was received on August 20, 2001 in which he stated:

In reference to the tax claim CERTIFIED MAIL NO:
[Redacted], The purchase of this Helicopter was never consummated and or completed. I received a notice from your office and responded in kind to this affect.

I was going to purchase 50% for about \$22,500.00 but never completed the deal, due to the fact that I “Had” been flying that Helicopter, it was suggested that I be named on the registration due to liability reasons.

I find it hard to believe that the state conducts it’s affairs in this manner, I responded to this long ago and feel it necessary to

send you this response in certified fashion. I have never “failed” to respond to your correspondence. About you search on the Internet to determine the value, this is a joke, to value something based on what it goes for on the Internet appears to be nothing more than greed. Also the helicopter was never imported into the state of Idaho.

TDB sent petitioner a letter on August 24, 2001, accepting his protest as timely. The letter requested two specific pieces of information to support petitioner’s contention that he never actually purchased this helicopter.

- 1) A copy of FAA registration documents showing that you have removed your name as owner of this aircraft.
- 2) A notarized statement from the owner of this aircraft that the sale of ½-ownership to you was never completed.

TDB checked the FAA Registry on October 10, 2001. The Registry still showed petitioner as the owner of this helicopter. According to the U.S. Department of Transportation, aircraft may be registered only by and in the legal name of the owner.

TDB did not receive any response to the August 24, 2001 letter, so petitioner’s file was transferred to the Legal/Tax Policy Division for further review.

On January 9, 2002, the Tax Policy Specialist (policy specialist) sent the petitioner a hearing rights letter to inform him of his alternatives for redetermining a protested NOD.

Petitioner’s response to the hearing rights letter was received on March 4, 2002. In his response, petitioner claims the helicopter was never introduced into Idaho but did not provide any documentation to support this claim. Petitioner also provided a memo titled “NOTE CANCELTION AGREEMENT.” The memo was not dated or notarized.

The policy specialist sent petitioner a letter dated March 15, 2002, that requested an address and phone number for [Redacted] and also that the “Cancellation Agreement” be notarized.

Petitioner called the policy specialist to inform him that he would not provide the requested information and directed the policy specialist to contact [Redacted] directly.

On March 7, 2003, [Redacted] provided the Commission with a hand written sales agreement for the helicopter dated July 19, 2000, which stated:

Sales Agreement

Hughes 269A

N 8885F

On this day, it is understood that [Redacted] has sold the above mentioned helicopter to [Redacted] for \$40,000.00 forty thousand dollars.

It is further understood and agreed to that I have no further interest or responsibility in the helicopter and that it is being sold as is where is.

[Redacted] July 19, 2000

It appears from the documentation provided by petitioner and [Redacted] that petitioner actually purchased the helicopter and [Redacted] provided the financing for that purchase. FAA records show a 50% co-ownership for petitioner and [Redacted] at the time of purchase and at the time of sale 18 months after the helicopter was purchased.

[Redacted] has paid half of the tax liability for the helicopter to the state of Idaho. Only the remainder of the liability for the helicopter will be addressed further in this decision.

Idaho Code § 63-3621 states that use tax is imposed on the storage, use or other consumption in this state of tangible personal property. The definition for "storage" can be found in Idaho Code § 63-3615 (2000) which states in part:

Storage -- Use. (a) The term "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 this state of tangible personal property purchased from a retailer. . . .

The statute imposing a penalty for failure to file can be found in Idaho Code § 63-3046(c) (2000) which stated:

In the event the return required by this act is not filed, or in the event the return is filed but the tax shown thereon to be due is not

paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns.

The statute relating to filing and payment of sales and use taxes, Idaho Code § 63-3623 (2000), stated in pertinent part:

(a) The taxes imposed by this act are due and payable to the state tax commission monthly on or before the twentieth day of the succeeding month. . . .

(c) On or before the twentieth day of the month a return shall be filed with the state tax commission in such form as the state tax commission may prescribe.

(d) For the purpose of the sales tax, a return shall be filed by every seller. For the purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his duly authorized agent. . . .

Thus, as a matter of law, the Sales Tax Act required that petitioner file a use tax return.

Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), addressed whether the taxpayer was required to pay interest. The Idaho Supreme Court said:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. *American Airlines, Inc. v. City of St. Louis*, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest . . . shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

Petitioner has not provided proof that the helicopter was not present in Idaho nor has he provided proof that a general sales or use tax was paid to another state for this helicopter. Therefore, use of the helicopter in Idaho requires the payment by petitioner of the remainder of use tax due to this state.

WHEREFORE, the Notice of Deficiency Determination dated June 13, 2001, as MODIFIED, is hereby APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
7/2000	\$1,000	\$250	\$158	\$1,408

Interest has been computed through September 18, 2003.

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 with this decision.

DATED this _____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, 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]

[Redacted]
