

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17472
[Redacted])	
)	DECISION
Petitioner.)	
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On November 21, 2002, the Compliance Section of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] proposing additional use tax, penalty, and interest in the amount of \$89,726. After receiving no response to the first Notice of Deficiency, the Commission issued identical Notices of Deficiency Determination to [Redacted] (taxpayer) and [Redacted] as responsible officers of [Redacted]. The notices were issued on May 16, 2003, in the amount of \$91,332.12. Mr. [Redacted] filed a timely protest and petition for redetermination. Mr. [Redacted]' accountant requested an informal hearing. The hearing was held on October 24, 2003.

[Redacted] purchased a Bell Helicopter in March of 2001 for \$1,310,000. The company purchased the aircraft for resale and did not pay sales or use tax on the purchase price. The company had intended to lease the helicopter to [Redacted] a related company. [Redacted] had intended to enter into contracts with the [Redacted]. [Redacted] was to use the helicopter in the performance of its obligations under these contracts. For an unknown reason, the contracts between [Redacted] and the [Redacted] were not finalized. [Redacted] has held the helicopter since that time.

The taxpayer's accountant was unable to provide any more information regarding the current status of the aircraft. He did not know what use had been made of the aircraft or whether it was in a flyable condition. He stated that he would try to gather more information about the use of the aircraft and submit it to the Commission before January 1, 2004.

Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. The use tax is a complementary tax to the sales tax. The rate of both taxes at the time of the purchase at issue was 5% of the sales price. The definition of “use,” Idaho Code § 63-3615, does not include the keeping or retaining of property for resale in the ordinary course of business. Since leases of tangible personal property are included within the definition of “sale” found in Idaho Code § 63-3612, [Redacted] could have legitimately purchased the aircraft for resale; however, Idaho Code § 63-3621 provides that a purchaser must pay use tax if he makes any storage or use of the property other than retention while holding it for resale in the ordinary course of business. The taxpayer has provided no evidence as to how the helicopter was used other than to state that it was not used as intended for the subsequent lease to [Redacted].

A deficiency issued by the Commission is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). In this case the taxpayer has not met this burden.

WHEREFORE, the Notice of Deficiency Determination dated December 7, 2001, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$65,500	\$16,375	\$11,839	\$93,714

Interest is calculated through January 31, 2004, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

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 _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, 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]

[Redacted]
