

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination of,)	
)	DOCKET NO. 17997
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On December 15, 2003, [Redacted] (taxpayer) filed a refund claim asking for a refund of use tax paid on the purchase of an airplane. The amount of the tax paid was \$3,975. The sales tax audit staff reviewed the refund claim and denied it. The Commission issued a Notice of Deficiency Determination Refund Denial on February 18, 2004.

The taxpayer protested the refund denial on April 5, 2004. The taxpayer requested an informal hearing, which was held on July 22, 2004.

The taxpayer purchased the plane to use in her business, which is flying skydivers to a sufficient altitude. When the plane reaches the correct altitude and location, the skydivers jump out of the plane and use parachutes to land safely on the ground. The taxpayer also provides training and assistance to the skydivers, if necessary. At the time the taxpayer purchased the plane, it was not equipped with the special modifications necessary to use the plane for skydiving. The modifications included removal of the doors, so the use of the aircraft is limited to skydiving. The taxpayer paid the use tax directly to the State Tax Commission on March 6, 2002. When the plane was modified, she applied for a refund.

The taxpayer argued that the purchase of the plane was exempt pursuant to Idaho Code § 63-3622GG:

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

The taxpayer argued that the plane is primarily used to transport passengers. The Commission disagrees. Idaho sales tax rule 037.06 states that purchases of aircraft for use for aerial contracting services are taxable. Although recreation is not specifically mentioned, the Commission believes that the primary use of the aircraft is recreation and not transportation. The Commission also believes that recreation is an aerial service and not transportation of passengers.

The Idaho Supreme Court has ruled that the object of the transaction sought by the purchaser controls the determination as to whether the transaction is a taxable sale or a nontaxable service. *Consolidated Freightways Corp. of Delaware v. State, Dep't of Revenue & Taxation*, 112 Idaho 652, 735 P.2d 963 (1987). In *City of Sun Valley v. Sun Valley Co.*, 123 Idaho 665, 851 P.2d 961, 199 (1993), the Sun Valley Co. argued that purchasers of ski lift tickets were purchasing transportation only. The Court stated:

Under the tax regulations and the rule in *Consolidated*, the real object of the transaction is determined by the "object sought by the buyer" and "end use of the product." Here the buyer is the purchaser of the lift ticket. The real object of the transaction depends on how we characterize the transaction. Sinclair argues that by purchasing the lift ticket, the buyer is only entitled to transportation to the top of the hill.

In this limited sense, transportation to the top is more important than any recreation that the buyer may enjoy by riding the lift itself.

However, looking at the transaction as a whole, the object sought by the buyer is to go skiing. One purchases a lift ticket and rides a chairlift to facilitate the recreation of skiing.... From this perspective, the end product or object sought by the buyer of a lift ticket is not just to get to the top of the hill; rather, it is the opportunity to ski down the hill. For this reason, the real object of the transaction is recreation, not transportation. Those who buy lift tickets use the chairlift to facilitate the recreational purpose of skiing.

In this case, the airplane is serving the same function as the chairlift and the same reasoning applies.

It is a rule of statutory construction that tax exemptions exist only by legislative grace and are to be strictly construed against the party claiming the exemption. *Kwik Vend Inc. v. Koontz*, 94 Idaho 166, 483 P.2d 928 (1971); *Leonard Construction Company v. Idaho State Tax Commission*, 96 Idaho 893, 539 P.2d 246 (1975).

WHEREFORE, the Notice of Deficiency Determination Refund Denial dated February 18, 2004, is hereby, APPROVED, AFFIRMED and MADE FINAL.

An explanation of [Redacted]right to appeal this decision is enclosed.

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]
