

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18606
[REDACTED])	
Taxpayer.)	DECISION
)	
)	
)	

On January 3, 2005, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing sales and use tax, and interest for the period of April 1, 1997, through March 31, 2004, in the total amount of \$11,727.

On March 4, 2005, the taxpayer filed a timely appeal and petition for redetermination. On March 16, 2005, the Commission sent a letter to the taxpayer explaining his right to an informal hearing. The taxpayer did not respond. On May 6, 2005, the Commission wrote once again to remind the taxpayer of his hearing rights. The taxpayer did not respond to this second letter.

The taxpayer runs a private shooting preserve. During the audit period, the taxpayer purchased several game birds which the taxpayer would release when hunters paid to hunt on his land. The auditor imposed tax on these purchases of birds. The auditor also imposed tax on untaxed sales of memberships and hunting packages. Charges for the use of or the privilege of using tangible personal property or facilities for recreation are included within the definition of “sale” found in Idaho Code § 63-3612(2)(f) and are therefore taxable.

The basis for the taxpayer’s protest is unclear. The protest letter included a copy of a blank shooting preserve permit application from the Idaho Department of Fish and Game. The taxpayer pointed out that the form states that “not more than 85% of the total number of each

classified game bird species released may be taken.” He stated that this requirement is no different than the 3% Forest Service fee described in sales tax rule 047.04 (IDAPA 35.01.02.047.04). That fee is imposed on outfitters and guides by the United States Forest Service. It is specifically excluded from the sales price subject to tax by Idaho Code § 63-3613. Apparently the taxpayer is arguing that the use tax on purchases of birds should be reduced by 15%. Although there is a statutory provision for the Forest Service fee, there is no parallel statute that applies to the purchases of birds. For this reason, there is no basis in law for reducing the amount subject to tax.

In the taxpayer’s protest letter, he stated that he did not believe the birds were promotional giveaway items. The taxpayer seems to be arguing that he is a retailer, selling the birds in the ordinary course of business. The Tax Commission, however, does not view the birds in this case as promotional giveaways. Rather, the birds are tangible personal property consumed by the taxpayer in the course of running the business. Idaho Code § 63-3612 states that the term "sale" means any transfer of title of tangible personal property for a consideration. What the taxpayer’s customers are paying for is the right to hunt on the taxpayer’s property. The title to the birds is not transferred to the customer at the time of the sale of the right to hunt.

The taxpayer states:

Also to say that no one would come is [sic] it were not for the birds implies that dead birds are the sole reason that many seek outdoor recreation. One must ask why catch and release fish or photograph in the wilds.

The taxpayer’s point is not clear, but he does seem to be saying that hunters do not necessarily end up with the birds they are hunting for. As noted earlier, the Idaho Department of Fish and Game requires that at least 15% of the birds must be released into the wild. The taxpayer therefore is not selling the birds to his customers. He is charging for the privilege of

hunting the birds that the taxpayer releases on his land. Also, as mentioned earlier, since this is a fee for using a facility or tangible personal property for recreation, it is taxable.

Finally, the taxpayer seems to imply that he is being taxed twice, once on his purchase of the birds and once when he collects tax from his customers. The Idaho Supreme Court has already addressed the issue of double taxation in a similar case. The taxpayer in *Boise Bowling Center v. Idaho*, 93 Idaho 367, 461 P.2d 262, (1969), rented pinsetting equipment from A.M.F. The taxpayer argued that paying sales tax on this rental was double taxation, since the taxpayer had to collect tax from its customers as well. The Court stated:

Lastly we turn to respondents' (proprietors') contention that the imposition of the sales tax on the transaction between themselves and A.M.F. constitutes 'double taxation' since the statute also imposes a tax on the transaction between the proprietor and his customer (bowling patron). It is evident that two transactions have occurred simultaneously. The first is the proprietor's rental of the pinsetting equipment from A.M.F. The second is the sale of bowling services by the proprietor of the bowling establishment to his customers. These are two entirely distinct transactions which are being subjected to taxation. The first relates to the privilege of renting tangible personal property within the state. The second relates to the privilege of using bowling facilities (a unique combination of property and services) for recreational purposes. There are two entirely different taxpayers in each transaction; the proprietors in the first, his customers in the second. A sales tax is not a tax on property but rather an excise tax—a levy on certain transactions designated by statute. *Leonardson et al. v. Moon et al.*, 92 Idaho 796, 451 P.2d 542 (1969). There is no double taxation when two separate and distinct privileges are being taxed even though the subject matter to which each separate transaction pertains may be identical. In *Lakewood Lanes, Inc. v. State of Washington*, 61 Wash.2d 751, 380 P.2d 466, 100 A.L.R.2d 1108 (1963) the Washington Supreme Court recognized that where there are two separate taxpayers and two separate transactions, even though both involved the identical subject matter, each of the transactions had a distinct taxable significance thus removing any taint of double taxation. It is the retail sale that is taxed, not the article.

In this case the taxpayer's purchase of the birds and the fee charged to customers for hunting privileges are also distinct transactions. Therefore, there is no double taxation.

WHEREFORE, the Notice of Deficiency Determination dated January 3, 2005, is APPROVED, AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$8,716	\$3,223	\$ 11,939

Interest is calculated through August 1, 2005 and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

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 _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, 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]

Receipt No.
