

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19367
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On March 31, 2006, 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 April 2003 in the total amount of \$17,425.

On April 5, 2006, a timely protest and petition for redetermination was filed by the petitioner’s president, [Redacted]. An informal hearing was requested [Redacted] and was held by telephone on June 20, 2006. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

[Redacted] Idaho Code section 63-3621 imposes an excise tax on the storage, use, or other consumption in this state of tangible personal property brought to Idaho unless an exemption provided by Idaho Code applies. Idaho residents are responsible for the tax upon first use in Idaho. Nonresidents are responsible for tax if storage, use, or consumption of the property exceeds 90 days in Idaho.

In the petitioner’s protest letter dated April 5, 2006, [Redacted] stated in part:

[Redacted]

[Redacted] argued that the use [Redacted] was exempt pursuant to Idaho Code section 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.

Idaho Code section 63–3622GG was enacted in 1988 to allow intrastate charter airlines that transported passengers and freight for hire to purchase aircraft exempt from the sales/use tax in order to compete with nonresident interstate airlines which did not have to pay sales/use tax on their aircraft.

[Redacted] interpretation of Idaho Code section 63–3622GG is that it makes all aircraft exempt from sales/use tax simply by forming a separate entity that leases the plane back to the owner of the entity. [Redacted] also believes that the transport of the closely held entities' corporate officers, employees, business records, and business equipment constitutes the transport of passengers or freight for hire. Other states' statutes (such as California, New York, and New Jersey) similar to Idaho's require that the owners of aircraft offer their services of transporting passengers and freight for hire indiscriminately to the public.

A search of business entity information in California, Idaho, and Washington was done by the Commission's Tax Policy Specialist. [Redacted] Fees for Aircraft Use. Owner will be responsible for setting the fees for Aircraft use.

It does not seem to be an arm's length transaction when the same individuals are the principals of both the lessor and the lessee.

A review of the aircraft logbook entries for 2005 provided [Redacted] showed that [Redacted] was the pilot of the aircraft for all 86 flights. The logbook for 2005 also showed that only one passenger was transported by the aircraft on one of the flights in 2005.

The American Heritage[®] Dictionary of the English Language: Fourth Edition 2000, defines the term “passenger” as a person who travels in a conveyance, such as a car or train, without participating in its operation. Therefore, by definition, [Redacted] was the pilot of the aircraft he could never be a passenger on that aircraft.

The tax policy specialist spoke [Redacted] on October 17, 2006. [Redacted] stated that he didn’t always record in the logbook the passengers and freight that were transported on the aircraft.

A letter was sent to the petitioner on October 20, 2006, requesting that [Redacted] provide a list of all the flights in 2005 in which passengers and/or freight were transported for hire in the aircraft. [Redacted] was also asked to include the name of the passenger and the type of freight transported.

On November 8, 2006, the petitioner sent a letter to the tax policy specialist in which [Redacted] stated:

I am responding to the enclosed request for additional documentation. You had requested this information by 11/3/06.

I am respectfully asking for three additional weeks to gather this information. I can have this information mailed by 11/24/06.

On November 27, 2006 the Commission received a letter and spreadsheet [Redacted] The spreadsheet showed the petitioner’s aircraft was flown on 32 round trip flights in 2005. [Redacted] was the pilot on all of these trips, [Redacted] went on 12 of the trips, and an employee [Redacted] went on one of the trips. The spreadsheet showed that business records

and equipment of the closely held entities were also taken on the plane but not on trips that included [Redacted] On almost every trip the spreadsheet showed that miscellaneous tools were taken on the plane. At the bottom of the spreadsheet it showed that miscellaneous tools include: power drill, circular saw, sawzall, chop saw, extension cords, tool box, carpenter tools (such as hammer, level, square, chalk line, fasteners, etc...), and computer/electrical wiring supplies.

In a case with similar circumstances the Indiana Department of State Revenue issued a Letter of Findings Number: 05-0363 in which it stated in pertinent part:

The relationship between Taxpayer and BM is interfamilial. There is not rental and leasing to others; it is renting and leasing to self. On the lease, the member who signs for Taxpayer is the same person who signs as member for BM. There is no arms-length transaction to others; these are one and the same persons benefiting.

The petitioner claims an exemption for an aircraft that transports passengers or freight for hire. The service is neither advertised nor available to the public. Predominately, the only occupant of the aircraft is the pilot who is both the lessor and the lessee. The cost or charges for the lease are not bargained for in the free market sense. The charges are based on flight hours, rather than per passenger, as you would expect to see in ordinary commerce. These lessee entities are only leasing the aircraft from the petitioner in order to transport [Redacted] therefore, the aircraft is not used primarily to transport passengers or freight for hire.

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 dated March 31, 2006, is hereby

APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$14,125	\$706	\$2,910	\$17,741

Interest is computed through February 23, 2006.

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 included with this decision.

DATED this _____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2006, 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.
