

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20167
[REDACTED])	
Taxpayer.)	DECISION
)	
)	
)	

On March 20, 2007, the staff of the Sales 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 January 1, 2004, through December 31, 2006, in the total amount of \$1,315.

On May 1, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer requested an informal hearing before the Commission, which was held June 25, 2007.

The taxpayer is a franchisee of [Redacted] and operates three [Redacted] in Idaho. At issue is the imposition of use tax on purchases of [Redacted].

In its protest letter the taxpayer argued that, since it was selling the use of the [Redacted], they were purchased for resale. It also argued that it was being subjected to double taxation which violates Article VII, Section 5 of the Idaho State Constitution. The taxpayer did not raise these arguments at the hearing. Nevertheless, the Commission notes that purchases of parts for [Redacted] were held to be consumed by the [Redacted] and not for resale in a previous decision issued by the Commission. (See docket # [Redacted].) This decision was upheld by the Board of Tax Appeals. Also, the Idaho Supreme Court has ruled that the constitutional provision on double taxation applies only to property taxes and not to other taxes. See, *Idaho Gold Dredging v. Balderston*, 58 Idaho 692, 78 P.2d 105, (1938); *Geo. B. Wallace, Inc., v. Pfof*, 57 Idaho, 279, 290, 65 P.2d 725, 729 (1937).

The taxpayer cited an Arizona case, *[Redacted]*. This case dealt with [Redacted] that operated in substantially the same manner as the taxpayer. The Arizona Department of Revenue had ruled that the [Redacted]' sales were rentals of tangible personal property and therefore taxable. There was a lengthy statement of facts, in which the court stressed safety precautions employed to prevent injury from [Redacted]. The court held that the [Redacted] did not surrender control of the [Redacted] to the customers and that the charges for using the [Redacted] were not taxable. The Commission does not disagree with this ruling. If the taxpayer were renting the [Redacted], the purchase of the [Redacted] themselves would be purchases for resale. In this case, however, the taxpayer is providing a service and is therefore the consumer of the [Redacted].

The Tax Commission has long held that sales of [Redacted] services are charges for the privilege of using tangible personal property or facilities for recreation and therefore included within the definition of "sale" in Idaho Code § 63-3612(2)(f). The taxpayer has provided evidence of the therapeutic benefits of [Redacted], apparently to show that [Redacted] is not recreational. The Commission need not reach a decision on that issue, however, because the sales of [Redacted] services are not in dispute. The taxpayer's argument is that, if sales of [Redacted] services are taxable, purchases of the [Redacted] and other equipment should be exempt.

As noted earlier, the Commission has ruled that the [Redacted] are not purchased for resale. The taxpayer acknowledges that it is not renting the [Redacted] to its customers. Instead it is providing a service. In *Boise Bowling Center v. State of Idaho*, Idaho 367, 461 P.2d 262, (1969), the Idaho Supreme Court ruled that purchases of pin setting equipment by a bowling alley were consumed by the bowling alley, and therefore subject to use tax:

The mere fact that goods bought are used for the benefit of the customers or clients of the purchaser in no way detracts from their character as consumer goods. The goods are consumed by the purchaser in furtherance of his enterprise. The fact that the goods are used for the benefit of the purchaser's customers, or in the case of a bowling establishment or hotel, that the goods are used by the patrons themselves does not alter their character in the hands of the original purchaser (hotel owner or proprietor of a bowling establishment). They are and remain consumer goods which are consumed by the original purchaser in the course of his business. *Boise Bowling* at 369

The Commission also notes, as the *Boise Bowling* decision alludes, that sales of hotel furnishings are taxable, even though the hotel rents the room and charges tax to its guests. See Idaho Sales Tax Rule 028 (IDAPA 35.01.02.028.03).¹ This is consistent with numerous decisions from other states holding that hotels and motels are the consumers of furnishings and supplies used in guest rooms.²

WHEREFORE, the Notice of Deficiency Determination dated March 20, 2007, is APPROVED, AFFIRMED and MADE FINAL.

¹ It is true that sales of disposable items consumed by guests are exempt. There is a specific statute providing that exemption, Idaho Code § 63-3612(3). No such statute applies to tanning salons.

² Footnote 7 of *Mayflower Park Hotel, Inc. v. State, Dept. of Revenue*, 123 Wash.App. 628, 98 P.3d 534 (2004) cites the following decisions, all of which held various items to be consumed by the hotels: *Hotels Statler Co. v. District of Columbia*, 199 F.2d 172, 174 (D.C.Cir.1952) (china, glass, table linens, bed linen, towels, light bulbs, draperies and carpets “do not become parts of the room but are properties used by the hotel in furthering the sales of its rooms soap, toothpicks, stationery and similar articles actually consumed by guests are de minimis.”); *Atlanta Americana Motor Hotel Corp. v. Undercofler*, 222 Ga. 295, 149 S.E.2d 691, 695 (1966) (“the plaintiff itself used the property to make its rooms livable, and thus rentable to guests”); *Theo. B. Robertson Products Co. v. Nudelman*, 389 Ill. 281, 59 N.E.2d 655, 657 (1945) (“While no agent or employee of the hotel actually uses or consumes such paper articles and soaps, the use is no less the use by the hotel, for it is generally recognized that such articles are to be furnished by the hotel as a standard method of doing its business just as the carpets on the floor and the pictures on the wall are furnished.”); see also *City of Colorado Springs v. Inv. Hotel Properties, Ltd.*, 806 P.2d 375, 379 (Colo.1991) (“Investment Ltd. purchased the hotel property primarily for its own use in the conduct of its business of providing furnished rooms to guests for rental fees” and thus it was not “a wholesale purchase for resale and [was] subject to the imposition of a use tax”); *Kentucky Bd. of Tax Appeals v. Brown Hotel Co.*, 528 S.W.2d 715, 718 (Ky.1975) (in a use tax case, “the hotel is the ultimate consumer and user of the tangible personal property, even though the guests paid sales tax on the room-rental charge and the price of the meal”); *Telerent Leasing Corp. v. High*, 8 N.C.App. 179, 174 S.E.2d 11, 16 (1970) (“The consideration paid is for the lodging or accommodation itself-not for a specific bed, lamp, painting, table, chair or television.”); *Sine v. State Tax Comm'n*, 15 Utah 2d 214, 390 P.2d 130, 131 (1964) (“the motel owner is the ultimate consumer [of linens, towels, soap, mattress covers, blankets, etc.] under the letter and spirit of the use tax act”).

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>
\$1,215	\$116	\$1,331

Interest is calculated through July 30, 2007, and will continue to accrue at the rate set forth in Idaho Code § 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 _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2007, served a copy of the within and foregoing DECISION by sending the same by United States mail in an envelope addressed to:

[REDACTED]
[Redacted]

Receipt No.