

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19527
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On March 23, 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 2004 in the total amount of \$712,518.

On May 24, 2006, a timely protest and petition for redetermination was filed [Redacted]. An informal hearing was not held. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

[Redacted]. On [Redacted] in which she stated “I received this notice that I enclosed on Feb 19. I had sent this form to you in August. Please let me know what other information you will need from me if any.” The petitioner’s completed [Redacted] was received with this letter. [Redacted]

[Redacted]. In the petitioner’s protest letter dated May 24, 2006, [Redacted] stated “The two owners, [Redacted] have been paying a charter rate for each flight they have had on the [Redacted]. They are paying for any and all chartered time that they use.” In that letter, [Redacted] also asked what other documentation was necessary to resolve the protest.

[Redacted]. In a letter to the petitioner dated May 31, 2006, the Tax Enforcement Specialist (specialist) requested a copy of the contractual agreement between the [Redacted], [Redacted].

On June 13, 2006, [Redacted] [Redacted] provided the specialist with a copy of a letter [Redacted] that was executed on January 14, 2005.

The Agreement shows that the Owners can disapprove any charter flights or charterer. The Owners have first right of use over the Charter Company's charter fights. The owner's referred clients may be charged a rate that is lower than the minimum rate charged to regular charter customers. The charter rate paid by the owners merely allocates their costs of using the aircraft between the two owners.

On July 31, 2006, the Tax Policy Specialist (policy specialist) sent the petitioner a hearing rights letter to inform it of the alternatives for redetermining a protested NOD. A follow-up letter was sent to the petitioner on September 22, 2006. The petitioner did not respond to either letter.

On February 8, 2007, the policy specialist sent the petitioner a letter requesting additional information by no later than February 20, 2007.

During a phone call on March 7, 2007, [Redacted] stated that there were no written lease agreements, only oral agreements, between the owners of the aircraft [Redacted] and the previous charter company [Redacted].

On May 2, 2007, the policy specialist received a letter [Redacted] in which she enclosed the following:

[Redacted]

[Redacted]	[Redacted] [Redacted]	[Redacted]	[Redacted]	[Redacted] [Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

[Redacted]						
[Redacted]						
[Redacted]						

The table shows that the aircraft was used primarily (73 percent) by its owners and their closely held companies and was operated under Federal Aviation Regulations, Part 91. The charter company only used the aircraft around 21 percent of the aircraft’s flight hours. The aircraft’s hangar is in [Redacted], Idaho. The pilots that fly the aircraft work for the owner’s LLC partnership, [Redacted],

During a phone call with the policy specialist, [Redacted] requested a hearing before the Commission. [Redacted] also requested that the policy specialist call [Redacted]. [Redacted] also requested a hearing and was given the telephone number to schedule the hearing. Since [Redacted] had not called to schedule a hearing, the administrative assistant tried to call him several times but was not able to reach him.

On October 2, 2007, the policy specialist sent [Redacted] a letter to give her the opportunity to schedule a hearing. There was no response to this letter.

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.

It appears the petitioner is claiming that the aircraft is exempt from Idaho sales and use tax 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. (Emphasis added)

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 sales and use tax in order to compete with nonresident interstate airlines which did not have to pay sales or use tax on their aircraft.

[Redacted] interpretation of Idaho Code section 63-3622GG 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 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 Idaho was done by the Commission's Tax Policy Specialist. [Redacted]

[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

[Redacted]. The two LLCs that own the aircraft are single member LLCs and are considered disregarded entities. The definition in the Internal Revenue Code for a disregarded entity is a business entity (as defined in § 301.7701-2(a) of this chapter) that is disregarded as an entity separate from its owner for federal income tax purposes. Examples of disregarded entities include a domestic single member limited liability company that does not elect to be classified as a corporation for federal income tax purposes. These individuals are also members of the entity to which the aircraft is leased. Therefore, the same individuals are the principals of both the lessors and the lessee.

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 has not established that the aircraft was used primarily to transport [Redacted]. Entities such as LLCs or closely held corporations that primarily transport related parties including but not limited to employees or family members of the owner of the aircraft are not in the business of transporting freight or passengers for hire. Therefore, the use of this aircraft was not exempt from Idaho tax. [Redacted]. 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 23, 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>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1-Apr-04	\$516,000	\$129,000	\$130,484	\$775,484

Interest is computed through April 2, 2008.

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 _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, 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]

Receipt No.