

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20328
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On March 24, 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 tax period of May 2004 in the total amount of \$4,539.

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] registered in Idaho are presumed to be present in Idaho. [Redacted]In the petitioner’s protest letter dated May 25, 2006, [Redacted] that the petitioner asserts the [Redacted] actual value is less than the value placed by the Commission. The petitioner also stated the [Redacted] was in need of repairs and could not be flown legally.

A power-of-attorney (POA) form was received by fax from [Redacted] that appointed him as the petitioner’s attorney-in-fact in this matter.

On September 20, 2006, the TDB sent the petitioner a letter requesting copies of purchase documents and repair documents for the aircraft.

In a letter dated September 23 2006, [Redacted]

On August 17, 2007, the Tax Policy Specialist (policy specialist) sent the petitioner's representative (representative) a hearing rights letter to inform him of the alternatives for redetermining a protested NOD. A follow-up letter was sent to the petitioner's representative.

On October 19, 2007, the representative sent a fax to the policy specialist revoking the petitioner's POA.

On October 23, 2007, the Tax Policy Specialist (policy specialist) sent the petitioner a hearing rights letter to inform him of the alternatives for redetermining a protested NOD. The petitioner did not respond 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. The amount of use tax due is based on the rate of 6 percent of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property.

Idaho Code § 63-3615(a) defines the term "storage" as any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer. Idaho Code § 63-3615(b) defines the term "use" to "include the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property by any person." The Idaho Supreme Court held that the definition of "use" as contained in Idaho Code § 63-3615(b) is intended to be construed broadly. K Mart Corp. v. Idaho State Tax Com'n, 111 Idaho 719 (1986).

The petitioner owes use tax on the storage of the aircraft in Idaho. The petitioner did not provide a copy of all purchase documents and repair documents associated with his purchase of this aircraft in order to reduce the taxable amount as defined on the NOD.

It is well settled in Idaho that a NOD issued by the Idaho State Tax Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the petitioner to show that the tax deficiency is erroneous. Id. Since the petitioner has failed to meet the burden in this case, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

WHEREFORE, the Notice of Deficiency Determination dated March 24, 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>
May 2004	\$3,300	\$825	\$627	\$4,752

Interest is computed through May 8, 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]

Receipt No.
