

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20967
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On November 8, 2007, a Tax Enforcement Specialist of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (Petitioner) proposing use tax, penalty, and interest on the sale of a [Redacted].

The Petitioner filed a timely¹ appeal and petition for redetermination. The Commission held an informal hearing with [Redacted], the Petitioner’s legal representative on September 30, 2008. The Commission has reviewed the file, considered the information provided at the hearing, and issues this decision modifying the NOD.

In July 2006, the Petitioner¹ purchased a 2006 [Redacted] for \$209,000². No Idaho sales/use tax was paid on the transaction. [Redacted] allegedly told the Petitioner that the [Redacted] purchase was exempt from sales/use tax because it would be used to transport passengers for hire. The Petitioner entered into a [Redacted] agreement with [Redacted] on July 1, 2006. In April 2007, the Petitioner sold the [Redacted] to [Redacted] Corporation.

[Redacted] provides professional and recreational [Redacted]. [Redacted].

¹ The Petitioner purchased the helicopter in the name of his law firm, [Redacted].
² The Petitioner alleges that the purchase price was \$202,000. However, the Security Agreement and Promissory Note from [Redacted]

Under Idaho Code § 63-3621, a use tax is imposed on all tangible personal property unless an exemption applies. Idaho Code § 63-3622GG (1) provides an exemption for sales and use tax if the [Redacted] is being used primarily to [Redacted]. [Redacted].

The Petitioner puts forth an equity argument as to why he should not be liable for the sales/use tax on the purchase of the [Redacted]. The Petitioner believes he should be excused from paying the sales/use tax because he relied on the mistaken advice of [Redacted] that the purchase was exempt from sales tax. [Redacted] is not an expert on tax matters. Reliance, on the advice provided by [Redacted] is not reasonable, and the Petitioner should have sought a second opinion. [Redacted]misinformation does not excuse the Petitioner from being responsible for the tax on the sale [Redacted].

However, because the Petitioner apparently relied on the mistaken advice from [Redacted] when he purchased the [Redacted], the Commission agrees to waive the penalty assessed under Idaho Code § 63-3046(a).

It is well settled in Idaho that a Notice of Deficiency Determination 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.* The Petitioner does not set forth any substantive arguments or documentation to show that the Notice of Deficiency prepared by the Commission is incorrect. Therefore, the Commission finds that the tax amount due on the Notice of Deficiency Determination is correct.

WHEREFORE, the Notice of Deficiency Determination dated November 8, 2007, is hereby MODIFIED to waive the penalty imposed, and as so modified is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$10,450	\$1,928	\$12,378

Interest is calculated through May 1, 2009, 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 Petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____, 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2009, 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.
