

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21609
[Redacted],)	
)	DECISION
Taxpayer.)	
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On November 19, 2008, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing use tax, penalty, and interest for the period of May 1, 2008, through May 31, 2008, in the total amount of \$17,925.

On December 8, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on February 12, 2008.

[Redacted]. In March 2008, the owner of the business, [Redacted], was involved in an accident that resulted in the destruction of a [Redacted] airplane. [Redacted], the taxpayer used insurance proceeds received after the accident to purchase a [Redacted] airplane. The only issue is the imposition of use tax on the purchase price of the [Redacted] airplane.

Idaho Code § 63-3621 imposes a tax on the storage, use, or other consumption of tangible personal property in Idaho. The use tax is a complementary tax to the sales tax. The liability for use tax is extinguished when a purchaser pays sales tax to the seller on purchases of tangible personal property. Every state that imposes a sales tax also imposes a use tax.

The taxpayer argues that it does not owe use tax because the [Redacted] was purchased as a replacement for the aircraft that was destroyed. According to the taxpayer, this amounts to “double taxation.”

Sales and use taxes are not property taxes. The incidence of the sales tax is not the property itself or its presence within the state. Rather, it is the transfer of title for consideration. *Sullivan v. United States*, 395 U.S. 169, 89 S.Ct. 1648 (1969). There is no double taxation in this case because the tax is only being imposed on the purchase of the new airplane. All sales are taxable unless an exemption applies. There are no exemptions that apply to the taxpayer's purchase of this aircraft.

The NOD was calculated by using a sales price of \$273,000. The taxpayer showed that the actual sales price was \$270,000. The Commission also agrees to waive the penalty. The amount of the deficiency has been modified to reflect these changes.

WHEREFORE, the Notice of Deficiency Determination dated November 19, 2008, is MODIFIED, and as MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

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>
\$16,200	\$780	\$16,980

Interest is calculated through March 20, 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 taxpayer's right to appeal this decision is included.

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.