



camping privileges in any of the sites within the network. The Idaho location also provides campsites to non-members for a fee based on length of stay and services provided.

An audit revealed that the taxpayer did not collect sales tax or travel and convention tax on campsite rentals to non-members, on campsite membership sales, or on membership maintenance fees.

#### RELEVANT TAX LAW

In Idaho, there are two transaction taxes that apply to the taxpayer's business. Sales of hotel, motel, and campground accommodations are included within the statutory definition of "sale" (Idaho Code § 63-3612(2)(g)). In addition, Idaho Code § 67-4718 imposes a 2 percent tax on the sale of a place to sleep by a hotel, motel, or campground.

#### TAXPAYER'S PROTEST - MEMBERSHIP SALES

The taxpayer does not dispute that it should have collected both taxes on daily and multiple-day charges to camping customers.<sup>1</sup> It disputes the audit finding that tax should have been collected on campground membership sales. This excerpt is from the taxpayer's protest correspondence:

It is well established that memberships to recreational facilities are taxable in Idaho. Petitioner believes this case differs from previous decisions in that the membership sold by [Redacted], entitle members to use campgrounds at any of the resorts in [Redacted] network, which

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<sup>1</sup> Both tax statutes provide an exemption for stays longer than 30 consecutive days, but there were no such stays in the audit period.

are located in several states. As such, it is conceivable that a membership could be sold to someone that never utilizes the Idaho facility or that a member from another state could use the Idaho facility consistently (Letter dated May 14, 2009<sup>2</sup>).

#### ANALYSIS - MEMBERSHIP FEES

The Commission reviewed a document titled “[Redacted]” which entitles “Member to use all facilities owned or operated by [Redacted]. ...an Idaho corporation, for the benefit of its members on the terms and conditions set forth....”

A document entitled “Conditions of Membership – Plan 2” states that “[Redacted] will include full usage of all future [Redacted] resorts as they become available at no additional charge” (Paragraph 5). Nothing in the available membership document indicates privileges in other states, nor does the taxpayer claim to own or have an ownership stake in any campground other than at the location at issue in this decision. At the taxpayer’s Web site, [Redacted], there is no mention of any other corporation-owned site in or outside of Idaho.

Although the taxpayer states in its protest that members can use campsites at any of the resorts in the taxpayer’s multi-state network and suggests that it can do so with no additional cost, the taxpayer has provided nothing to substantiate this.

A link on the taxpayer’s Web site home page has contradictory information. The link ([Redacted] is to [Redacted] According to [Redacted], an individual with a membership at a “home resort” affiliated with [Redacted] qualifies for accommodation discounts at campsites across the country. The taxpayer is an affiliated campsite.

According to the Web site’s Frequently Asked Questions (FAQ) page, the initial membership fee is determined by an individual’s [Redacted]. This is the fee at issue in this

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<sup>2</sup> The taxpayer misclassifies the tax at issue. It is not a tax on “[t]he use of or the privilege of using facilities for recreation” (Idaho Code § 63-3612(2)(f)). Rather, it is a tax on “[p]roviding hotel, motel, campground, or trailer court accommodations... and included services” (Idaho Code §§ 63-3612(2)(g)) and “... the renting of a place to sleep, to an individual by a hotel, motel, or campground for a period of less than thirty-one (31) continuous days” (Idaho Code § 67-4711(7)) despite any recreational or amusement component.

decision, but it costs an additional yearly sum to qualify for the discounted accommodations available at locations in the network outside of the “[Redacted].” An Internet search reveals that reciprocal relationships of this type among resorts and campgrounds are common.

The taxpayer speculates that a camper could buy a membership at the taxpayer’s resort in Idaho only for the purpose of being part of a network that will allow him to camp outside of Idaho. The speculation about where an Idaho-member camper will exercise his privileges in the future is what the taxpayer asserts as a rationale for not subjecting the membership fee to Idaho’s sales or travel and convention tax.

The Commission believes the taxpayer’s speculation is unfounded and that the lifetime membership for use of the taxpayer’s [Redacted], subject to both taxes. The sale is made in Idaho and the benefits are expressed in a written contract. The only promise, according to the contract, is the provision of [Redacted] privileges at no extra charge, in a facility owned by the taxpayer, in conformity with the rights and restrictions of the contract. The requirement that each member be subject to a non-negotiable, yearly maintenance fee for the Idaho [Redacted] is further evidence of a member’s intent to [Redacted].

A [Redacted] customer must have a membership at a [Redacted] as a precondition to [Redacted] at reduced rates elsewhere, but there is no contractual requirement that a member must become a paid member of the affiliated network of campgrounds as well. There is no mention of [Redacted] or of any out-of-state benefits. Although we do not know the membership cost for using out-of-state facilities for [Redacted], we do know there is one. From [Redacted] FAQ page, we know that memberships are by calendar year and that there are reinstatement fees of \$100 to \$150 to renew lapsed memberships.

Accordingly, the Commission believes that despite any out-of-state discounts available through a membership with the taxpayer's property, all requirements for a taxable sale in Idaho have occurred relative to the previously cited statutes.

#### TAXPAYER'S PROTEST—MAINTENANCE FEES

The taxpayer disputes the audit finding that tax should have been collected on [Redacted] maintenance fees.

This excerpt is from the taxpayer's protest correspondence:

[Redacted]

The taxpayer's reference to Administrative Rule 14, above, is from the [Redacted] Sales Tax Administrative Rules which states:

... the charge for providing rooms or campground spaces shall mean and refer to the total amount of consideration, ... from the user or occupant for the use or occupancy of the room or space. It does not include separately stated service charges which are not an integral part of the use or occupancy of the room or campground space such as separately stated telephone, food, beverage or laundry charges but does include amounts charged for temporary use of tangible personal property used in conjunction with the room such as a charge for an extra bed. In the case of campgrounds any charges for water, electrical or sewer hookups are an integral part of the charge for the use of the space and are included in the amount subject to tax. (IDAPA 35.01.06.014.)

## ANALYSIS - MAINTENANCE FEES

The taxpayer protested the imposition of both taxes on the yearly maintenance fees the taxpayer charged to members stating that the fee was not for [Redacted] *per se*. It argues that the sales price subject to tax does not include “separately stated service charges which are not an integral part of the use or occupancy of the room or [Redacted] such as separately stated telephone, food, beverage or laundry charges” (IDAPA 35.01.06.014).

The Commission contends that the charges of concern to the taxpayer (i.e., maintenance fees for campground area) are not in the same category of those excluded from the price subject to tax as stated in the rule. Telephones, laundry service, food, and beverage service are not on-going maintenance costs borne by the taxpayer.<sup>3</sup>

Further, Idaho Code § 63-3613, which defines sales price subject to sales tax, prohibits the deduction of certain items from the computation of tax. The exclusions sought by the taxpayer for maintenance fees are not within the ambit of that statute. In fact, sales price cannot be reduced for “[t]he cost of materials used, labor or service cost, losses, or any other expense” (Idaho Code § 63 3613(a)(2)).

Maintenance is an expense to the property operator, not a charge to a customer for use. The following is illustrative. Motels and hotels incur costs to maintain the premises, such as daily cleaning expenses, periodic maintenance, more complex repairs, and remodeling activities. As these expenses are not typically separately stated from customer lodging charges, they are presumed to be built in to the sales price, enabling the property owner to recover all business costs and make a profit. A separate statement of these costs, in an effort to make them non-taxable, is not permissible because it is unsupported by the statute.

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<sup>3</sup> The taxpayer is referencing the travel and convention tax, which imposes a tax only on places provided for sleeping. The sale of food and beverage would be the sale of tangible personal property subject to sales tax (Idaho Code § 63-3612).

The Commission has history with a similar issue. In *Crane Creek Country Club v. Idaho State Tax Commission* (122 Idaho 880, 841 P.2d 410), the Idaho Supreme Court upheld the Commission ruling that the club was required to collect sales tax on initiation fees, membership dues, assessments, and unused dining minimums. The taxpayer, in that case, argued that these charges were not fees to use the club but, “were used wholly for the purpose of paying operating and overhead costs, and ... they were payable regardless of whether [a] member actually used the facilities.”

The Court concluded that “[t]his argument is without merit, for under the plain language of the statute the relevant inquiry in determining the taxability of the event is the *quid pro quo* between the remitter and the recipient, not the ultimate use to which the recipient applies the receipts. It is clear that what the Crane Creek member receives for their payment is the privilege to use the Crane Creek facilities, as Crane Creek's own Bylaws provide that nonpayment results in an automatic suspension of membership and forfeiture of all rights to use Crane Creek facilities” (*op cit*).

The terms of [Redacted] contract with its members are identical on the relevant issue. Failure to pay the annual maintenance fee to the taxpayer is cause for the termination of membership camping privileges. The Commission has, since *Crane Creek* was decided in 1992, followed the *quid pro quo* precept to prevent certain separately stated charges from being treated as non-taxable.

For the foregoing reasons, the Commission upholds the audit findings.

The Bureau added interest and penalty to the use tax deficiency. The Commission found both appropriate per Idaho Code §§ 63-3045 and 63-3046. This decision acknowledges the taxpayer's payments toward the total amount asserted by the Bureau.

WHEREFORE, the Notices of Deficiency Determination dated December 16, 2008, are hereby APPROVED, AFFIRMED, and MADE FINAL, in accordance with the provisions of this decision.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following taxes, penalties, and interest:

Sales Tax

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$10,311	\$516	\$1,119	\$11,946
Less interest accrued to 2/17/2009			(101)
Less payments			<u>(12,736)</u>
Excess to be allocated to travel and convention tax			(892)

Travel and Convention Tax

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$3,247	\$162	\$327	\$3,736
Excess paid to sales tax deficiency			(892)
Add interest accrual to 12/31/2009			<u>117</u>
		TOTAL DUE	<u>\$2,961</u>

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 enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

IDAHO STATE TAX COMMISSION

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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.

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