

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21976
[Redacted])	
Petitioner.)	DECISION
)	
)	
_____)	

On May 20, 2009, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing sales and use tax and interest for the period of October 1, 2004, through October 31, 2004, in the total amount of \$52,243.

On May 20, 2009, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on September 3, 2009.

The only issue, in this case, is the imposition of use tax on the use of a Cessna Caravan 208 airplane. The aircraft was purchased by [Redacted] in 1988. [Redacted] sold the airplane to the taxpayer in April 2004. The taxpayer is a limited liability company that was owned at that time by a business named [Redacted]. The taxpayer used the plane in its charter airline business. The sale of the airplane to the taxpayer was, therefore, exempt under Idaho Code § 63-3622GG, which states:

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 provide passenger or freight services for hire as a common carrier only if:
 - (a) The person operates the aircraft under the authority of the laws of this state, the United States or any foreign government; and
 - (b) The aircraft is used to provide services indiscriminately to the public; and
 - (c) The aircraft itself transports the person or property from one (1) location on the ground or water to another.
- (2) The sale, lease, purchase or use of aircraft primarily used for air ambulance services.

(3) 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.

(4) 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 aircraft described under subsections (1) and (2) of this section are exempt. Tools and equipment utilized in performing such remodeling, repair or maintenance are not exempt.

After a few months of operation, the taxpayer decided that it was not economically feasible to operate the airplane. [Redacted] agreed to return the money (less an amount for the airplane's use) paid by the taxpayer and take back the airplane. The transaction was not a rescinded sale, however. Rather than the plane itself going back to [Redacted], the parties transferred ownership of the [Redacted]. So, although the ownership of the limited liability company was changed, the title to the aircraft was not transferred and still remains in the name of the [Redacted], the taxpayer. When [Redacted] became the owner of the LLC, however, he ceased using the plane for the transportation of freight or passengers for hire. At that time, the use of the plane no longer qualified for the exemption provided by Idaho Code § 63-3622GG, and the Commission issued a Notice of Deficiency imposing use tax on the value of the plane.

The taxpayer argues both the sale of the airplane to the taxpayer and the transfer of the [Redacted] were actually transactions between [Redacted]. The intent of the transfer back to [Redacted] was to rescind the original sale of the plane and return both parties to their respective positions before the sale of the aircraft to the taxpayer. The taxpayer cites IDAPA 35.01.02 (Rule 099) in support of this argument. The taxpayer reasons that Rule 099 would exempt the transfer of an aircraft from an individual to his wholly owned LLC if sales tax were paid on the original purchase.

Rule 099 is an administrative rule that interprets Idaho Code § 63-3622K, otherwise known as the occasional sale exemption. Subsection 099.05 states:

05. Transfers Between Related Parties. The transfer of capital assets between related parties qualifies for an occasional sale exemption, but only if the person transferring the asset has paid a sales or use tax when the asset was acquired. Exempt transfers between related parties include: capital assets transferred in and out of businesses by owners, partners, shareholders, stockholders, when the transfer is made only in exchange for equity in the business, and capital assets transferred between a parent corporation and its subsidiary, if the parent owns at least eighty percent (80%) of the subsidiary, and transfers between subsidiary corporations with a common parent, if the parent owns at least eighty percent (80%) of both, and if the transfers are made only in exchange for stock or securities.

This subsection is a restatement of Idaho Code § 633622K(b)(3). The exemption provided by this subsection only applies when the entity transferring the property has paid sales tax on its acquisition of the property. In this case, the LLC did not pay sales tax when it purchased the aircraft from [Redacted].

Furthermore, Idaho Code § 63-3622K(b)(3) is not applicable because it only exempts transfers of tangible personal property between a business entity and its individual owners. In this case, the tangible property, the aircraft, was not transferred. Only the intangible ownership of the LLC was transferred to [Redacted].

Similar issues were involved in a property tax case from [Redacted]. In [Redacted], real property tax is limited to 1 percent of the appraised value of the property when purchased. The value of the property cannot be increased for property tax purposes unless the property is sold; however, transfers from parents to their children are exempt from such an increase.

In Penner v. County of Santa Barbara, 37 Cal.App.4th 1672, 44 Cal.Rptr.2d 606 (1995), the owner of a three acre parcel of land transferred the property to a limited partnership owned by herself and her children. The county assessor determined that the transfer constituted a

change in ownership and made a supplemental assessment of the property, increasing its value for property tax purposes from \$337,276 to \$2,300,000. The property owner argued that the transaction was an exempt transfer to herself and her children.

The California Court of Appeals ruled that the transfer was not exempt under California law, even though the taxpayer could have transferred the property to her children and then to a limited partnership without incurring the tax increase. The Court stated:

Penner never transferred the property to her children. Neither party asks us to ignore transfers actually made by Penner. Instead, Penner argues that the tax consequences of her transaction should be determined by pretending that she took steps which, in reality, she did not. We cannot base our decision on hypotheticals. “[A] transaction is to be given its tax effect in accord with what actually occurred and not in accord with what might have occurred.” [Emphasis added.] [Citation omitted.] Having chosen to transfer the property directly from herself to the partnership, Penner “must accept the tax consequences of [her] choice whether contemplated or not, [citations] and may not enjoy the benefit of some other route [she] might have chosen to follow but did not.” [Citation omitted.] Penner v. County of Santa Barbara, 37 Cal.App.4th 1672, 44 Cal.Rptr.2d 606 at 610.

The taxpayer also cites IDAPA 35.01.02 (Rule 045), which deals with rescinded sales. For the same reasons discussed above, the transaction cannot be viewed as a rescinded sale. [Redacted] is not in the same position that he was prior to the sale of the aircraft, when he held the title to the aircraft as an individual. Regardless of the intent of the parties, the plane itself was not sold back to [Redacted].

It is possible that the taxpayer could have structured the transaction differently in order to avoid the use tax liability. Nevertheless, it chose not to do so. The United States Supreme Court has stated: This Court has observed repeatedly that, while a taxpayer is free to organize his affairs as he chooses, nevertheless, once having done so, he must accept the tax consequences of his choice, whether contemplated or not, (citations omitted) and may not enjoy the benefit of

some other route he might have chosen to follow but did not. Commissioner v. National Alfalfa Dehydrating & Milling, 417 U.S. 134 (1974).

WHEREFORE, the Notice of Deficiency Determination dated May 20, 2009, is APPROVED, AFFIRMED, and MADE FINAL.

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

TAX	INTEREST	TOTAL
\$40,500	\$12,570	\$53,070

Interest is calculated through November 18, 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 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.
