

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22479
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On November 5, 2009, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing sales and use tax, penalty, and interest for the period of September 1, 2009, through September 30, 2009, in the total amount of \$7,921.

On December 18, 2009, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on July 13, 2010.

At issue is the imposition of use tax on the purchase and use in Idaho of a [Redacted]. 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. Paying sales tax to the seller extinguishes any use tax liability. Every state that imposes a sales tax also imposes a complementary use tax.

[Redacted]. Both individuals were Idaho residents when the taxpayer purchased the [Redacted] in March 2007. The taxpayer registered the [Redacted] with the [Redacted] stating that the plane was hangared in [Redacted]. In 2009, the taxpayer amended the registration to state that the plane would be hangared in [Redacted]. The use of the airplane became taxable in Idaho at that time.

The taxpayer has raised two issues. First, [Redacted]. stated that before he brought the plane to Idaho, his son called the Commission and asked if they would owe any fees because

they were bringing the plane to Idaho. [Redacted] stated that he was informed that no fees would be due. He did not know the name of the person to whom he spoke. It is unclear why he would use the word “fees” rather than the word “taxes.”

Without stating it explicitly, the taxpayer has raised the issue of equitable estoppel.

Equitable estoppel arises:

[w]hen a party makes a false representation or concealment of a material fact with actual or constructive knowledge of the truth; it is made with the intent that it be relied upon; the party asserting estoppel does not know or could not discover the truth; and the party asserting estoppel relies on it to the party's prejudice. *Hecla Min. Co. v. Star-Morning Min. Co.*, 122 Idaho 778, 782, 839 P.2d 1192, 1196 (1992); *Allen v. Reynolds*, 145 Idaho 807, 186 P.3d 663, (2008).

In this case, the exact question that the taxpayer asked is not known, nor is the exact response by the Commission. It is unlikely that a Commission employee knowingly gave an incorrect answer on this issue. Moreover, there is no precedent in Idaho to support the argument that the Commission can be estopped from asserting a sales tax deficiency in this case. In fact, the Idaho Supreme Court has ruled the opposite:

In the levy and imposition of taxes, the state acts in its sovereign capacity, and hence, in an action for the collection thereof, cannot be subjected to an equitable estoppel. (Citations omitted.)

The government is not estopped by previous acts or conduct of its agents with reference to the determination of tax liabilities or by failure to collect the tax, nor will the mistakes or misinformation of its officers estop it from collecting the tax. (Citations omitted.) *State of Idaho v. Adams*, 90 Idaho 195, 409 P.2d 415 (1965).

The taxpayer, therefore, cannot avoid a use tax liability on the basis of incorrect verbal advice given by an unidentified Commission employee. The taxpayer has not claimed that its use of the aircraft is exempt. The Commission, therefore, finds that the taxpayer's storage, use, and consumption of the airplane in Idaho are taxable.

The second issue is the value of the airplane. Idaho Code § 63-3621 states that use tax is due on the market value of tangible personal property when it enters Idaho. A recent sales price is presumptive evidence of value. In this case, there is no recent sales price. The Commission staff imposed tax on the value of the plane listed in the Aircraft Blue Book, \$104,000. The taxpayer stated that the plane is not currently airworthy. In support of this position, the taxpayer provided a letter from [Redacted]. The letter stated that the aircraft is not airworthy; however, the value of the engine was between \$7,500 and \$8,500. Furthermore, the value of the wing parts and gears was estimated to be between \$50,000 and \$60,000. [Redacted] stated that he would offer \$24,000 for the plane, which would be the wholesale price. The taxpayer has therefore provided competent evidence that the market value of the plane is between \$57,500 and \$68,500. The use tax is imposed on the market value not the wholesale value. The Commission accepts that the estimate value of the aircraft is \$63,000.

Finally, the NODD imposed a 25 percent nonfiling penalty. The Commission believes the 5 percent negligence penalty is more appropriate in this case. See, Idaho Code §§ 63-3634 and 63-3046. The NODD will be appropriately modified.

WHEREFORE, the Notice of Deficiency Determination dated November 5, 2009, is MODIFIED, and as MODIFIED, is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$3,780	\$189	\$230	\$4,199

Interest is calculated through November 19, 2010, 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 _____ 2010.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2010, 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.
