

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23504
[Redacted])	
Petitioner.)	
)	DECISION
_____)	

On September 10, 2010, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing additional use tax and interest totaling \$66,079 for the period January 1, 2004, through May 31, 2010. In a letter dated October 22, 2010, the taxpayer filed a timely appeal and petition for redetermination. At the taxpayer's request, the Commission held a hearing on January 20, 2011.

For reasons explained below, the Commission hereby upholds the auditor's conclusions.

BACKGROUND

The taxpayer, an Idaho corporation, is a [Redacted]. [Redacted].

The Commission and the taxpayer agree on what the substance is and its purpose. As used by the taxpayer, [Redacted]. The purpose is [Redacted].

[Redacted].

APPLICABLE TAX LAW

In Idaho, a retail sale is taxable unless an exemption applies (Idaho Code §§ 63-3609 and 63-3612). However, a buyer's liability for the tax remains if the seller cannot, or fails to, collect the tax. In these instances, the buyer owes a use tax directly to the state. The use tax rate is identical to the sales tax rate. Payment of use tax extinguishes the sales tax liability (Idaho Code § 63-3621).

The taxpayer did not pay tax on the purchase or use of deicing fluid, believing that such use was exempt under the following statute:

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. (Emphasis added. Idaho Code § 63-3622GG.)

TAXPAYER'S PROTEST

The taxpayer states that its use of deicing fluid is required by the [Redacted].

Citing Idaho Code § 63-3622GG(4) of the exemption statute referenced above, the taxpayer states that the fluid is a “replacement material’ that is ‘applied’ directly to the aircraft and bonds with the surface at a molecular level.” It is likened to paint, becoming a component of the [Redacted]

Finally, [Redacted].

ANALYSIS

This is a case of first impression for the Commission. The Commission does not share the taxpayer’s view that application of the exemption statute to the facts at hand is unambiguous. The Commission notes that tax exemptions exist only by legislative grace and are to be strictly construed against the party claiming the exemption. Kwik Vend Inc. v. Koontz, 94 Idaho 166, 483 P.2d 928 (1971); Upper Columbia Mission Society v. Kootenai County, 93 Idaho 880, 477 P.2d 503 (1970).

There is no argument that the fluid is necessary and that its use is mandated by a federal agency. However, these considerations are not mentioned in the exemption statute.

The taxpayer argues that [Redacted]. Even if one were to consider that reapplication is replacement of an earlier application, the application is more of a janitorial function, akin to using a detergent to wash away surface contaminants from [Redacted]

[Redacted]:

Webster's Ninth New Collegiate Dictionary defines “maintenance” as the act of maintaining and defines the root word “maintain” as meaning to keep in an existing state, as of repair, efficiency or validity and to preserve from failure or decline. The same source defines “repair” as meaning to restore by replacing a part or

putting together what is torn or broken (*Bunker Hill Co. v. State ex rel. State Tax Com'n 111 Idaho 457, 725 P.2d 162 Idaho, 1986*).

The Commission believes it is reasonable to conclude from the preceding definition that maintenance and repair refer to the upkeep of an existing state and the restoration to a pre-existing state, respectively, and that [Redacted] attains neither of these goals.

In a related issue, the taxpayer objected to tax on that portion of deicer that was purchased in Idaho but was later used outside of the state. The auditor notes that the purchase was made from an Idaho registered vendor. Thus it was subject to sales tax, and the taxpayer would have paid sales tax to the vendor had it agreed there was no exemption. An exemption for the use of tangible personal property brought into this state for sole use out-of-state is limited to use tax, not sales tax (Idaho Code § 63-3615).

The Bureau added interest to the tax deficiency. The Commission reviewed this addition and found it to be appropriate per Idaho Code § 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated September 10, 2010, is APPROVED, AFFIRMED, and MADE FINAL.

The Commission acknowledges receipt of the amount shown on the Notice of Deficiency Determination dated September 10, 2010. Since interest was calculated to November 12, 2010, and payment was made on October 25, 2010, the taxpayer is due a refund of \$143.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2011.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2011, 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.
