

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 23566
[Redacted],,	)	
	)	
Petitioner.	)	DECISION
_____	)	

On September 28, 2010, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayer). The Notice proposed additional use tax, penalty, and interest in the total amount of \$21,631 for taxable periods July 2003 through December 2008. The taxpayer filed a timely appeal and petition for redetermination on November 30, 2010, and requested an informal conference which was held on March 9, 2011.

The Commission, having reviewed the audit file and considered the information obtained at the informal conference, modifies the audit findings for the following reasons.

The taxpayer is a company based in [Redacted], [Redacted], that specializes in providing [Redacted]to farmers. The company was incorporated in [Redacted]. Prior to that time, the owners operated the business as a sole proprietorship under a different business name. In addition to the company’s base in [Redacted], the taxpayer also operates out of a [Redacted] in [Redacted], Idaho.

The Bureau conducted an audit of the taxpayer’s assets. The Bureau found that the taxpayer used [Redacted] during the audit period for [Redacted] services in Idaho. One of the aircraft, hereafter known as the “Idaho aircraft,” was purchased in taxable year 2005 by the taxpayer. The other two aircraft, hereafter known as the “[Redacted] aircraft,” were purchased in the late-1990s by the owners of the taxpayer. The owners maintained ownership of the

[Redacted] aircraft separately from the business even after incorporation in taxable year [Redacted], though the taxpayer was allowed indiscriminate use as needed. No sales or use tax was paid on the purchase or use of any of the aircraft in question. The Bureau asserted use tax on the fair market value of all three aircraft as of the time of first use in Idaho by the taxpayer.

The taxpayer protested the Notice disagreeing with the taxation of the [Redacted] aircraft. The protest agreed that the use tax assessed on the Idaho aircraft was appropriate. Since the auditor and taxpayer agree on the taxation of the Idaho aircraft, further discussion is only necessary for the [Redacted] aircraft.

Idaho law limits the time in which additional sales and use tax may be assessed by the Commission. Idaho Code § 63-3633(a) imposes a limit of three years from the time that the sales tax return was filed. In the event that the taxpayer has not filed a return, Idaho Code § 63-3633(c) extends this limit to seven years from the time that the return should have been filed. In this case, the taxpayer did not file returns during the taxable period; therefore, the statute of limitations is seven years.

The Bureau asserted the Notice on September 28, 2010, assessing use tax based on the assumption that the [Redacted] aircraft were first used by the taxpayer in Idaho in July 2003. Based on these facts, the Commission concluded that the assessment was appropriately within the statute of limitations. However, in discussions with the taxpayer's owners, they disagreed with the auditor and asserted that the [Redacted] aircraft were first used in Idaho in September 2002, shortly after the taxpayer was incorporated. Though neither the auditor nor taxpayer have reliable documentation to support their respective claims, the Commission concludes that the date offered by the taxpayer seems reasonable given that the two [Redacted] aircraft were the only aircraft available for use by the taxpayer during September 2002.

Based on the taxpayer's first use of the [Redacted] aircraft in Idaho from September 2002, the Notice would need to be issued by October 20, 2009, to fall within the seven-year statute of limitations. Since the Notice was not issued until September 28, 2010, the Bureau did not assess the tax within the appropriate period of time. Consequently, no use tax is due on the two [Redacted] aircraft.

The Commission approves of the Bureau's imposition of interest as appropriate per Idaho Code § 63-3045(6). The Bureau also imposed penalties per Idaho Code § 63-3046(c) and (g), which the Commission hereby adjusts according to the authority of Idaho Code § 63-3047. The adjustment is reflected in the figures below.

THEREFORE, the Notice of Deficiency Determination dated September 28, 2010, and directed to [Redacted], is AFFIRMED AS MODIFIED by this decision.

IT IS ORDERED that the taxpayer pay the following amount of tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$6,750	\$844	\$2,158	\$9,752

Interest is calculated through July 29, 2011, and will continue to accrue until the liability has been 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 \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

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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.