

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 24602
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On July 13, 2011, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (taxpayer) proposing use tax and interest for the period January 2010, in the total amount of \$771,643. For the reasons that follow, the Commission finds in favor of the taxpayer.

On September 13, 2011, the taxpayer filed a timely appeal and petition for redetermination of the Notice, including several defenses. On September 28, 2012, the Commission held a hearing at the taxpayer’s request. The Commission is fully apprised of the facts and the applicable law pertaining to this case, and issues this decision.

Background

In January 2010, the taxpayer, a limited liability company, registered [Redacted] with the Federal Aviation Administration (FAA) using an Idaho address. The taxpayer stated that it had not paid tax on the purchase or use of the [Redacted]. It further claimed that the [Redacted] has at all times been under an exclusive use agreement with one particular entity (Company). The taxpayer provides the [Redacted] in what it refers to as a [Redacted] to Company.

The Bureau concluded that the taxpayer owed Idaho use tax pursuant to Idaho Code § 63-3621, because the taxpayer’s sole use of the [Redacted] purposes in 2010 did not constitute an exemption for passenger or freight services for hire found in Idaho Code § 63-3622GG.

### Relevant Tax Law

In Idaho, the sale, purchase, and use of tangible personal property is subject to tax unless an exemption applies. If sales tax cannot or is not paid to the vendor, the buyer owes a use tax to the state. The sales and use tax rates are identical, and all states with a sales tax have a complementary or compensating use tax requirement. Payment of use tax extinguishes the sales tax obligation (Idaho Code §§ 63-3612 and 63-3621).

However, the Idaho tax code contains exemptions to the general law that a sale of tangible goods is taxable, and that the use of goods in this state is taxable. Specifically, the following exemption statute currently exists, excerpted in relevant part:

AIRCRAFT. [EFFECTIVE UNTIL JUNE 30, 2016] 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... (Idaho Code § 63-3622GG)

The auditor's conclusion from the examined facts is that the aircraft is not available indiscriminately to the public, but rather is available exclusively to one party by contract. This, the auditor contends, is an impermissible use for which to claim the sales or use tax exemption referred to above in (1)(b).

### Analysis and Conclusion

While the aircraft was registered in Idaho in 2010, it was nevertheless used in Idaho first in 2004. Further, the use of the aircraft at that time was identical to its use during the time period of the audit. That is, it was for the benefit of Company, to provide passenger flight services for a fee. These facts are not in dispute.

In 2004, the previously referenced aircraft exemption statute read as follows, in relevant part:

Aircraft. -- There is exempted from the taxes imposed by this chapter:  
(1) The sale, lease, purchase, or use of aircraft primarily used to transport passengers or freight for hire (Idaho Code § 63-3622GG., in effect in 2004).

Note that there is no qualifying language regarding indiscriminate availability to the public. That addition was enacted in 2009. In 2004, the aircraft purchaser need only use the aircraft primarily to transport passengers or freight for hire in order to qualify for the exemption.

For goods bought outside of Idaho and later brought to this state, it is presumed that the first presence in Idaho is the point giving rise to the tax:

IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property ... for storage, use, or other consumption in this state (Idaho Code § 63-3621, excerpted in relevant part).

Only those tax codes in effect at that time can be used to determine if an exemption existed. The Commission concludes that for the use of the aircraft in Idaho in 2004, an exemption existed that is not voided by later changes in the tax code. Further, while the taxpayer provided alternative and separate defenses, the Commission need not consider them for this decision in favor of the taxpayer.

THEREFORE, the Notice of Deficiency Determination dated July 13, 2011, is hereby CANCELLED.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2013, 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.  
  
\_\_\_\_\_