

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 38911
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On April 3, 2014, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (Petitioner), proposing sales tax, use tax, penalty, and interest for the period January 1, 2013, through December 31, 2013, in the total amount of \$5,040.

On April 28, 2014, the Petitioner filed a timely appeal and petition for redetermination of the Notice. At the Petitioner’s request, the Commission held an informal hearing on July 1, 2014. Present at the informal hearing were Commissioner [Redacted], Deputy Attorney General [Redacted], and Tax Policy Specialist [Redacted].

The Commission, having reviewed the audit file and considered the information provided at the hearing and in the months following, hereby upholds the audit findings for the reasons detailed below.

Background

The Petitioner purchased a [Redacted] for \$ 82,000 on October 30, 2012. On March 18, 2013, the Bureau sent a questionnaire letter requesting information to assist in determining whether or not Idaho sales/use tax was due on the purchase of the aircraft. The Petitioner completed the questionnaire, indicating that the aircraft was purchased primarily for renting or leasing to others. The Bureau verified that the Petitioner applied for and received a seller’s permit on January 1, 2013 and was filing quarterly returns. A review of the returns showed that

while the Petitioner was claiming that the [Redacted] was purchased primarily for renting or leasing to others, no sales were being reported prompting the Bureau's request for documentation supporting the rental or lease of the [Redacted].

The Petitioner informed the Bureau that it had an agreement with [Redacted]) and provided a copy of the agreement for review. According to the agreement, [Redacted] promotes the use of the aircraft to customers for personal travel, business travel, [Redacted].

The agreement goes on to state that [Redacted] turns over any fees collected for the use of the aircraft, less any expenses, such as fuel, oil, maintenance, hanger fees. The agreement specifies that [Redacted] would be responsible for the collecting and remitting of sales tax for the use of the aircraft.

After reviewing the flight logs for the aircraft, the Bureau determined that [Redacted], also the owner of a [Redacted] on behalf of the Petitioner had not been taxed.

The Bureau held that [Redacted] of the aircraft was that of an agent, and in spite of the fact that [Redacted] was provided by [Redacted], the rental was between the Petitioner and the [Redacted]. The Bureau contends that the aircraft was being rented to flight students by the Petitioner as a taxable bare equipment rental (i.e. no operator) and imposed the sales tax on all sales that were identified as bare equipment rentals and any personal use of the aircraft by the Petitioner.

#### Relevant Tax Statutes and Administrative Rules

Idaho imposes a sales tax on the rental or lease of tangible personal property, among other transactions (Idaho Code § 63-3612(2)(h)). A lessor is a retailer required to collect sales tax from the purchaser, in this case the lessee (Idaho Code §§ 63-3610 and 63-3619) unless an exemption applies to the lease or rental transactions. The purchase of an aircraft, or any other

tangible personal property which is intended to be sold or held for the purpose of lease or rental, can be purchased exempt from tax under a tax code provision commonly referred to as the resale exemption (Idaho Code § 63-3609). If tangible personal property no longer qualifies for the exemption for which it was purchased, use tax is due.

Use tax is a complementary tax to sales tax and is applicable only if sales tax has not been paid to a retailer and no exemption from tax applies. Payment of use tax extinguishes the sales tax obligation (Idaho Code § 63-3621). Collection of unpaid sales and use tax by the State of Idaho from a retailer is barred when a retailer files sales and use tax returns and the transactions at issue occurred more than three years from the time the returns were filed. For those who operate without a permit and do not file returns, the statutory period is seven years (Idaho Code § 63-3633(a)).

IDAPA 35.01.02.024 discusses the rental or lease of tangible personal property and clarifies the difference between a bare equipment rental and a fully operated equipment rental and discusses how the purchase of rental equipment should be treated in each case. The rule also discusses how the purchase of rental equipment that is used both as a bare equipment rental and fully operated equipment rental.

Rule 024. Rentals or Leases of Tangible Personal Property.

01. In General. The lease or rental of tangible personal property, including licensed motor vehicles, is a sale.

02. **Bare Equipment Rental. A bare equipment rental, that is, a rental of equipment without operator, is a taxable sale.** The owner of the equipment is a retailer and must get a seller's permit and collect and remit sales taxes. The equipment owner must collect sales tax on each rental payment and remit the tax to the State Tax Commission just like any other retailer. The tax applies whether the equipment is rented by the hour, day, week, month, or on a mileage, or any other basis. The equipment owner who mainly rents bare equipment may buy the equipment without paying tax to the vendor by giving him a resale certificate....

03. Fully Operated Equipment Rentals.

a. **A fully operated equipment rental, equipment with operator, is a service rather than a retail sale** of tangible personal property. No sales tax is due on a fully operated equipment rental.

b. **A fully operated equipment rental** is an agreement in which the owner or supplier of the equipment or property supplies it along with operators who are his own employees, and **the property supplied is of no value to the customer without the owner's employees.**

c. The owner or supplier of the equipment or property used in a fully operated equipment rental is the consumer of the equipment or property, and is subject to sales or use tax when he buys or uses the equipment in Idaho.....

d. **If the equipment or property has value to the customer without the owner's or supplier's employees, then the lease or rental of the equipment or property is a distinct transaction**

04. Mixed Use of Rental Equipment

a. **If the equipment owner primarily rents bare equipment but sometimes supplies equipment with an operator, the equipment owner is the consumer of the equipment while it is used by the operator to perform a service contract.** Accordingly, the equipment owner must pay use tax on the fair market rental value of the equipment for that period of time unless he paid tax when he bought the equipment.

b. **If the equipment owner primarily rents fully operated equipment but sometimes rents bare equipment, he must charge and remit Idaho sales tax on the rental of the bare equipment.** The tax applies even though the equipment owner's purchase of the property was also subject to sales or use tax. In this case, the owner purchased the equipment for a purpose other than the resale or re-rental of that property in the regular course of business.....(IDAPA 35.01.02.024, excerpted in relevant part. Emphasis added).

Petitioner's Protest

The Petitioner protested the imposition of sales tax on all sales that were identified by the Bureau as bare equipment rentals, arguing that the flights in question were fully operated equipment rentals. The Bureau found that the aircraft was primarily used for flight instruction. The Petitioner argues that that while it did not provide an [Redacted], one was provided by [Redacted] for the [Redacted] making them fully operated equipment rentals.

This argument is not especially helpful to the Petitioner. There is no exemption for the purchase of equipment that will be primarily rented as fully operated equipment; the equipment itself would be subject to sales tax on the full value of the equipment. In the event that the

equipment is occasionally rented without an operator, the equipment owner would be expected to collect and remit sales tax on the rental of the bare equipment.

In response to the Bureau's determination that the rental of the aircraft was a bare equipment rental directly to the flight students that was merely facilitated by [Redacted], the Petitioner referred to IDAPA 35.01.02.037.08:

**08 Flying Instructions.** Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax.

**a. Aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales or use tax.**

**b.** When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service... (IDAPA 35.01.02.037.08, excerpted in relevant part. (Emphasis added))

The Petitioner put a strong emphasis on the first part of the subsection above, repeatedly pointing out that flight instruction or lessons are not subject to sales tax, but pointedly ignored subsections 08.a and 08.b. of the same rule that make it clear that aircraft purchased, rented, or leased to be used primarily for flying instruction is subject to sales or use tax.

The Commission agrees with the Petitioner's stance that the fees charged to students for flight instruction are not subject to sales tax. The Commission has previously held the position reflected in subsection 08 above that the student is not renting an aircraft when it is used for purposes of flight instruction. The fees charged to the student for flight instruction are not subject to tax. (Tax Commission Decision - Docket # [Redacted]). Idaho Code § 63-3045B states that, "[a] decision shall serve as precedent for the tax commission in future protest determination unless information excised, court decisions, changes in the Idaho Code, or changes in applicable administrative rules overrule, supersede, modify, distinguish, or otherwise make inapplicable the written decision of the tax commission."

The Petitioner, through [Redacted] used the aircraft to provide flight instruction, which is a nontaxable service, however, the use of aircraft to provide that service is taxable to the Petitioner, not to the students.

Flight instruction is a service and not taxable. However, use of an aircraft to provide flight instruction or for personal use is taxable to the owner of the aircraft (Idaho Code § 63-3622GG). The aircraft in question has been used primarily for flight instruction and for personal use by the Petitioner. Neither of these activities supports the Petitioner's stance that the aircraft was purchased for resale, has been held in a retail inventory and was primarily for rent or lease to others. The Commission determines that the aircraft does not qualify for the exemption under which it was purchased; therefore use tax is due on the value of the aircraft.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through March 31, 2015, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

WHEREFORE, the Notice of Deficiency Determination dated April 3, 2014, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$4,277	\$642	\$262	\$5,181

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 \_\_\_\_\_ 2014.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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.  
  
\_\_\_\_\_