

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 26129
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On November 7, 2013, 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 April 1, 2009, through December 31, 2012, in the total amount of \$165,906.

On December 24, 2013, 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 March 10, 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 and Audit Findings

The Petitioner is an Idaho-based business that leases equipment, primarily aircraft, exclusively to a related entity (Lessee). The Petitioner purchases the equipment without paying sales tax under the resale exemption on the premise that the equipment will be leased or rented to another party. The Petitioner then leases the equipment without an operator to the Lessee who uses the equipment for fueling aircraft, flight instruction, contracted flights, and providing passenger or freight services for hire.

The Bureau conducted a limited scope examination of the eighteen equipment leases between the Petitioner and the Lessee and found that sales tax was not being collected and remitted by the Petitioner on these leases. The Bureau found that three of the equipment leases examined were for aircraft that the Lessee was using to provide passenger or freight services for hire and verified that these leases did qualify for exemption under Idaho Code § 63-3622GG. As a result, the Bureau held that the Petitioner did not have a requirement to collect sales tax on those leases. The Bureau held the Petitioner did have a requirement to collect sales tax on the remaining leases, in the absence of any exemption.

The Petitioner is in agreement with the audit findings, with the exception of the imposition of sales tax on the lease of four [Redacted] used by the Lessee for contracts with the [Redacted] and the [Redacted].

Relevant Tax Statutes and Administrative Rules

Idaho Code § 63-3612 states that “[t]he term ‘sale’ means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration...and shall also include...[t]he lease or rental of tangible personal property.”

Idaho Code § 63-3616 defines tangible personal property as “personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.”

Idaho retailers are required to collect sales tax from buyers (Idaho Code § 63-3619) in the absence of an exemption. The Bureau found instances where the required taxes were not collected.

Of relevance to this case, is the lease of an aircraft (tangible personal property) which is taxable in the absence of an exemption. Idaho Code § 63-3622GG lays out several specific

exemptions for aircraft used in specific ways. The previous version of this statute existed well before the beginning of the audit period and remained in effect until June 30, 2009. It reads, 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. This exemption includes 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 such aircraft, ...

Idaho Code § 63-3622GG was amended, effective July 1, 2009, to read, in relevant part, as follows:

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....

(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....

There are two relevant differences in the statute versions. The earlier version exempts “aircraft primarily used to transport passengers or freight for hire.” The later version narrows the definition to “aircraft primarily used to provide passenger or freight services for hire as a common carrier” and which “provide [such] services indiscriminately to the public...”

Analysis and Conclusion

In performing these contracts, unlike a standard on-demand flight for transportation from Point A to Point B, the terms require a [Redacted] government employee (the manager) to be in charge of each use of the aircraft, dictating what it would do and when it would do so.

Admittedly, there is an element of transportation involved. However, the arrangements are conceptually different.

Central to this decision is the Commission's conclusion that a contract to suppress a [Redacted] for the [Redacted], [Redacted], or a private landowner is not a contract to transport passengers or freight for hire in the sense that those terms are generally understood. As the Commission understands such contracts, the contracting party agrees to a readiness to serve the government with no guarantees on what activities will be necessary. It is generally not known at the time of the contract what use would be made of the aircraft. The aircraft manager has control that the ordinary air traveler does not possess. He can make reasonable spontaneous demands on the pilot, and the latter will execute them. The government is buying a service that it can bend at will. It is not the transportation of passengers and freight as intended in Idaho's statute.

In addition, the Petitioner has not shown evidence of the indiscriminate availability of these specific aircraft to the public for transportation or that it is operated as a common carrier. The Petitioner argues that the Tax Commission has not correctly construed the exemption found in Idaho Code § 63-3622GG. The Petitioner makes reference to the original Statement of Purpose of the legislation, as well as Tax Commission rules, Tax Commission decisions, the Anti-Head Tax Act found in 49 U.S.C.S. 40116, and laws interpreting the [Redacted]excise tax in this context. The Tax Commission recognizes the Petitioner's efforts in establishing an argument supporting its position that the aircraft's activities qualify the lease contracts for exemption. However, the Tax Commission notes that Idaho Code § 63-3622GG and the Sales Tax Administrative Rule 037 are the result of work directly with the Idaho Legislature. The Idaho Legislature has both enacted the amendments to Idaho Code § 63-3622GG into law and reviewed the rules proposed by the Tax Commission in this context. The Tax Commission has

also reviewed the Anti-Head Tax Act and the other arguments referred to by the Petitioner. After careful consideration, the Tax Commission concludes that these arguments lack the merit necessary to overturn the tax asserted by audit. Although Petitioner makes well-crafted arguments to support its position, they are arguments that need to be made to the legislature instead of the Tax Commission. The Legislature may change the law; the Tax Commission administers the law as passed.

The Commission finds that the leases of the four aircraft by the Petitioner to its related entity do not qualify for exemption under Idaho Code § 63-3622GG and hereby upholds the audit findings.

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the Petitioner's sales and use tax liability for the period April 1, 2009, through December 31, 2012.

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 May 31, 2015, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination, dated November 7, 2013, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$123,247	\$30,813	\$19,520	\$173,580

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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.