

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 38924
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On January 14, 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 June 1, 2013, through June 1, 2013, in the total amount of \$8,005.

On March 13, 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 October 20, 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 \$104,900 on December 26, 2012. On March 18, 2013, the Bureau sent a questionnaire to the Petitioner requesting information to determine whether Idaho sales/use tax was due on the purchase of the aircraft. The Petitioner completed the questionnaire, indicating that the aircraft was purchased for renting or leasing to others and

would be held out for that purpose when the aircraft was brought back to Idaho, which did not happen until June 2013.

The Bureau investigated whether the Petitioner was a permitted Idaho retailer to confirm that the aircraft was being added to a resale inventory but found that the Petitioner was unpermitted at the time the aircraft was purchased. The Petitioner did not apply for and receive an Idaho seller's permit until February 1, 2014, fourteen months after the purchase of the aircraft and eight months after the aircraft was brought to the state of Idaho.

The Bureau also requested copies of any rental or lease contracts for the aircraft to verify that the aircraft was part of a resale inventory, none of which was provided for review. The Bureau, unable to verify that the aircraft had actually been rented or leased to anyone, held the aircraft subject to use tax as of the date it was first brought to the state of Idaho.

#### 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)). Under the sales tax code, a lessor is a retailer required to collect sales tax from the lessee unless an exemption applies (Idaho Code §§ 63-3610 and 63-3619). An aircraft intended to be sold or held for the purpose of lease or rental can be purchased exempt from tax under a provision commonly referred to as the resale exemption (Idaho Code § 63-3609).

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 (Idaho Code § 63-3621). If tangible personal property is acquired under an exemption and later no longer qualifies for that exemption, use tax is due.

### Petitioner's Protest

The Petitioner protested the imposition of use tax on the aircraft, stating that the sole purpose for acquiring the aircraft was to rent it to a third party to be used for flight training, specifically to train pilots in operations and navigation under instrument conditions. After the acquisition of the aircraft, the Petitioner upgraded its avionics so that the aircraft could be used for that purpose.

The upgrade was completed in April 2013 and the aircraft was brought to the state of Idaho in June 2013. According to the Petitioner, due to subsequent maintenance issues, the aircraft could not be leased until February 2014, at which time a seller's permit was obtained.

With the protest letter, the Petitioner provided copies of the flight/maintenance log books as well as a blank copy of a generic lease contract for the aircraft in question. The Bureau reviewed this documentation and determined that the aircraft had been used exclusively by the Petitioner and held the purchase of the aircraft subject to use tax.

### Analysis

The Petitioner acknowledged that in spite of its intent to use the aircraft for flight instruction, it has not been used for that purpose to date. The only use of the aircraft since it was purchased and brought to the state of Idaho in 2013 has been personal use by the owner of the aircraft. At one point during the appeals process, the Petitioner agreed to pay tax on the aircraft stating that it was no longer considering leasing the aircraft, but the Petitioner has not withdrawn the petition for redetermination prior to the 180-day period for issuing a final decision, as provided for in Idaho Code section 63-3045B(3).

Tangible personal property that no longer qualifies for the exemption for which it was purchased is subject to use tax. In this case, the Petitioner has not established that tangible

personal property in question ever qualified for the exemption. Therefore, the Commission agrees with the Bureau that the aircraft became taxable upon its first use in Idaho in June 2013.

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 of June 1, 2013, through June 1, 2013.

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 December 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 January 14, 2014, 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>
\$6,294	\$1,574	\$366	\$8,204

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

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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.

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