

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 25522
[Redacted] ,)	
)	
Petitioner.)	DECISION
_____)	

On June 28, 2012, the staff of the Sales, Use and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Taxpayer Initiated Refund Determination (Notice) to **[Redacted]** (Petitioner), denying the refund of sales tax paid for the purchase of an aircraft for the period January 1, 2009, through March 31, 2009, in the total amount of \$102,090.

On August 29, 2012, 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 Thursday, April 23, 2015. Present at the informal hearing were Commissioner **[Redacted]**, Deputy Attorney General **[Redacted]**, and Tax Policy Specialist **[Redacted]**.

The Commission is fully advised of the contents of the audit file, as well as information obtained at the hearing and thereafter and hereby issues its decision to uphold the Notice.

Background

On February 16, 2009, the Petitioner purchased a Cessna **[Redacted]**. At the time of the sale, the facilitator, Time Value Property Exchange, Inc., collected sales tax in the amount of \$102,090 from the Petitioner. On April 13, 2012, the Petitioner submitted a sales tax refund claim in the amount of \$102,090 asserting that after the purchase was finalized, the aircraft was leased to **[Redacted]** . (**[Redacted]**) who would use the aircraft in its charter operations. The Petitioner admits in the protest letter that it purchased the aircraft so it would

have ready access to air transportation; however, it intended that the aircraft would be used primarily for the transport of passengers or freight for hire.

The Bureau denied the sales tax refund claim asserting that the Petitioner did not provide evidence that the sales tax paid for the purchase of the aircraft was collected in error. Based upon its review of the actual use of the aircraft, the Bureau held that the primary use of the aircraft was not for the transport of passengers or freight for hire which would have been an exempt use, rather it was primarily used for corporate flight hours and training use. The Petitioner protested the denial of the sales tax refund claim asserting that the aircraft does qualify for exemption.

Relevant Idaho Tax Codes and Administrative Rules

In Idaho, the sale of tangible personal property is taxable unless an exemption applies (Idaho Code §§ 63-3612 and 63-3619). Idaho also imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. Payment of sales tax to a vendor extinguishes the use tax liability. In this case, there is no dispute as to whether the Petitioner paid sales tax, rather there is a dispute as to whether the aircraft itself qualified for exemption at the time of purchase and the sales tax was collected in error.

In the event that it is determined that the purchase of the aircraft qualified for exemption at the time of purchase, the sales tax act provides a remedy for the overpayment of tax. Idaho Code § 63-3626(a) states that “if any amount due under this chapter has been overpaid, the excess amount may be credited on any amount then due to the state tax commission from the person by whom the excess was paid and any balance refunded to that person.”

The Petitioner purchased an aircraft and contracted with **[Redacted]** to manage the aircraft. According to the agreement, **[Redacted]** is to provide transportation of the Petitioner’s owners, officers, employees, representatives, and guests under the provisions of the

Federal Aviation Regulations (FAR) Part 91 in exchange for a monthly management fee. The Petitioner also agrees to pay **[Redacted]** for the fixed and variable aircraft expenses.

The agreement also specifies that **[Redacted]** agrees to lease the aircraft from the Petitioner for the purpose of providing charter (air taxi) and air ambulance service. In the event that **[Redacted]** uses the aircraft for this use, it agrees to pay 85 percent of the published actual retail rate for the actual hours flown on the airplane to the Petitioner in addition to 100 percent of the fuel surcharge. 100 percent of the reimbursable expenses such as crew overnight expenses, aircraft landing fees, customs fees, catering expenses, federal taxes, excise taxes and any other such items that are considered reimbursable expenses are kept by **[Redacted]**.

Per the agreements, the Petitioner is paying **[Redacted]** as an independent contractor to employ and supervise the necessary flight and maintenance personnel, insure the craft, and provide for compliance with Federal Aviation Administration (FAA) regulations.

The Petitioner believes that its use of the aircraft qualifies for exemption by providing passenger or freight services for hire. The relevant part of the exemption in its prior form, which was effective the first six months of the review of the flight hours, reads 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 transport passengers or freight for hire... (Idaho Code § 63-3622GG, effective to June 30, 2009).

For the remaining twenty-seven months reviewed, the relevant part of that exemption statute reads 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. (Idaho Code § 63-3622GG, effective as of July 1, 2009).

63-3622GG exempts aircraft based on its primary use in both versions of this statute. Sales and Use Tax Administrative Rule 037, in relevant part, follows:

01. Definitions. For the purposes of this rule, the following terms have the following meanings: (7-1-94)

...b. Freight. Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (4-11-06)

...c. Transportation of passengers. The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)

...g. Transportation of freight or passengers for hire. "Transportation of freight or passengers for hire" means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. Such transportation must be offered indiscriminately to the general public. Entities such as LLCs or closely held corporations, that only transport related parties, including but not limited to employees or family members of the owner of the aircraft are not in the business of transporting freight or passengers for hire. (3-4-10)

02. Sales of Aircraft. Sales of aircraft are taxable unless an exemption applies. Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft: (4-11-06)

...a. Primarily used to transport passengers or freight for hire; (2-18-02)

03. Federal Law Prohibits States From Taxing Sales of Air Transportation. See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. (4-11-06) (IDAPA 35.01.02.037. Dates in parentheses indicate adoption by the Idaho legislature).

In both versions, the primary use of the aircraft to transport passengers or freight for hire is what qualifies an aircraft for exemption. The Bureau routinely uses flight hours in determining whether an aircraft had been primarily, more than fifty percent of the time, used in an exempt capacity. In this case the Bureau divided flight hours between qualifying and non-qualifying uses and determined that the aircraft was being used in a taxable capacity for greater than 50 percent of its total use. This is illustrated in the table below.

Period	Nontaxable Use	Taxable Use	Percent Taxable Use
01/01/09 – 12/31/09	34	227	87%
01/01/10 – 12/31/10	38	546	93%
01/01/11 - 09/30/11	19	199	91%

The following narrative expands on how the Bureau divided the flight hours in this case.

Taxable Use: Corporate flight hours and training use. The Bureau, the Commission, and the Petitioner agree that this use of the aircraft is a taxable use.

Nontaxable Use: The manager used the Petitioner’s aircraft and its own pilots to provide charter flights for the public. The Bureau, the Commission, and the Petitioner agree that these flight are what the claimed exemption intended and are a nontaxable use of the aircraft.

Excluded Hours: The Petitioner posits that the Bureau has excluded certain hours in its calculation of primary use that should have been included. Excluded hours are those that the aircraft was undergoing maintenance and was not in use, but was available for use. The Petitioner maintains that the hours the aircraft sat charter ready, were the same as the hours it was being chartered. The Petitioner compares its situation with that of a racehorse. The Petitioner points out that a racehorse may perform its “primary” job only a few days out of the year, specifically the day it races. The rest of the time the racehorse is training, traveling to and from races, or simply being rested. The Petitioner states that the aircraft, like the racehorse, is maintained in a constant state of readiness for charter.

The Petitioner maintains that its intent to acquire the aircraft and make it available for charter should be taken into consideration when determining the primary use of the aircraft. It asks the Commission to determine primary use in a way that reflects the need to have the plane “charter-ready” at all times.

Analysis and Conclusion

The Commission doesn't agree with the Petitioner that the hours that the aircraft was not in use should count as part of the hours the aircraft was being used for charter. To do so might lead to an absurd result, such as allowing an exemption when a qualifying use was ten percent of the total.

Finally, it is a rule of statutory construction that exemptions are to be construed narrowly. The Idaho Supreme Court has stated that tax exemptions are never presumed nor will a statute granting the exemption be extended by judicial construction so as to create an exemption not specifically authorized. *Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984); *Sunset Memorial Gardens, Inc. v. State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958). Also, statutes granting tax exemptions must be strictly construed against the taxpayer and in favor of the state. *Hecla Mining Co. v. Idaho State Tax Comm'n*, 108 Idaho 147, 697 P.2d 1161 (1985); *Canyon County v. Sunny Ridge Manor, Inc.*, supra; *Leonard Constr. Co. v. State Tax Comm'n*, 96 Idaho 893, 539 P.2d 246 (1975).

The Tax Commission, therefore, is required to view exemptions narrowly, applying the rule of constraining the exemption in question in light of any ambiguity of the term "primary."

There is additional evidence in favor of the Commission's position. First, it knows of no exemption that favors the taxpayer's reasoning. Further, where "primary" or "primarily" is defined in the sales and use tax administrative rules, it is defined as a qualifying use that exceeds fifty percent of the time (IDAPA 35.01.02.104.02.i. and 03.a.; Equipment necessary to, and primarily used in the process of, remanufacturing/rebuilding railroad rolling stock).

The Commission finds that the Petitioner appropriately paid sales tax on the purchase of the aircraft in question and upholds the Bureau's denial of the refund request received on April 13, 2012.

THEREFORE, the Notice of Taxpayer Initiated Refund Determination dated June 28, 2012, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

DATED this _____ day of _____ 2016.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2016, 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.
