

In the Matter of the Protest of)
)
 [Redacted]) DOCKET NO. 0-093-507-584
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)
 Petitioner.) DECISION
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On February 4, 2016, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission held an informal hearing on June 28, 2016. Present at the informal hearing were Commissioner **[Redacted]**, Deputy Attorney General ^[Redacted], and Tax Appeals Specialist **[Redacted]**.

Background and Audit Findings

On April 9, 2015, the Bureau conducted a review of the flight logs for [Redacted] in order to determine the primary use of the aircraft. In the event that the aircraft was used primarily to

provide passenger or freight services for hire as a common carrier, the lease between Petitioner and the lessee may qualify for exemption from the sales tax act. “Primarily” is defined as “the predominant or greatest use of the property,” Idaho Code § 63-3607A. The Bureau routinely uses flight hours to determine whether an aircraft has been primarily, more than 50 percent of the time, used in an exempt capacity. For each period that the percentage of nontaxable use exceeded 50 percent, the Bureau held that the lease between Petitioner and the lessee was not subject to sales tax. For each period that the percentage of taxable use exceeded 50 percent, the lease between Petitioner and the lessee was held subject to tax. The Bureau and Petitioner were in agreement on the determination of what constitutes a nontaxable and taxable use in this case, but Petitioner disagrees with the calculations made by the Bureau.

Protested Issues

Petitioner disagrees with the Bureau’s calculation of primary use on a month to month basis for the entire audit period. Petitioner questions why this was not measured over the entire lease period, which was two years. Petitioner argues that the review of the primary use of the aircraft on a monthly basis results in arbitrary determinations and argues that the primary use should be reviewed over the entire lease period.

In Idaho, a tax is imposed on the lease or rental of tangible personal property unless an exemption applies, Idaho Code § 63-3612(2)(h). In this case, an exemption could apply if the aircraft was used to provide passenger or freight services for hire as a common carrier during whatever period is under review. If no exemption applies, Idaho retailers are required to collect sales tax for the lease or rental of tangible personal property **at the time** the rental is charged, Idaho Code § 63-3619. Petitioner is collecting monthly lease payments on an aircraft that is used in both a taxable and nontaxable capacity. Petitioner has a statutory requirement to collect and

remit tax at the time the lease payment is collected. The lease payments are made on a monthly basis, therefore, it follows that the primary use determination should be made each month.

The second issue raised by Petitioner pertains to the hours it posits should have been included in the calculation of the primary use of the aircraft. Specifically hours that the aircraft was undergoing maintenance and hours that the aircraft was not in use, but was available for use. Petitioner maintains that the hours the aircraft sat charter ready were the same as the hours it was being chartered. Petitioner compares its situation with that of a racehorse. 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. Petitioner states that the aircraft, like the racehorse, is maintained in a constant state of readiness for charter.

The Commission does not agree with 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 one percent of the total. Exemption statutes favor certain taxpayer behaviors. The Commission believes that the legislature wished to reward particular uses that were in the majority rather than merely higher than all other uses. Had it believed otherwise, it would have specifically stated so in the exemption statute. There are Idaho court rulings that substantiate the Commission’s opinion:

It is a rule of statutory construction that tax exemptions exist only by legislative grace and are to be strictly construed against the party claiming the exemption.

Kwik Vend Inc. v. Koontz, 94 Idaho 166, 483 P.2d 928 (1971); *Leonard Construction Company v. Idaho State Tax Commission*, 96 Idaho 893, 539 P.2d 246 (1975).

The Idaho Supreme Court further expressed:

If there is any ambiguity in the law concerning tax deductions, the law is to be construed strongly against the taxpayer. [*Potlatch Corp. v. Idaho State Tax Comm’n*, 128 Idaho 387, 913 P.2d 1157 (1996)]. Id. This Court has no authority to

rewrite the tax code. *Bogner v. State Dep't of Revenue and Taxation*, 107 Idaho 854, 693 P.2d 1056 (1984). Any exemption from taxation must be created or conferred in clear and plain language and cannot be made out by inference or implication. *Herndon v. West*, 87 Idaho 335, 393 P.2d 35 (1964). This Court does not have the authority to create deductions, exemptions, or tax credits. If the provisions of the tax code are socially or economically unsound, the power to correct it is legislative, not judicial.

Idaho State Tax Commission v. Stang, 135 Idaho 800, 25 P.3d 113 (2001).

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.” The Commission knows of no exemption that favors the taxpayer’s reasoning.

Conclusion

On appeal, a deficiency determination issued by the Tax Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous.” *Parker v. Idaho State Tax Comm’n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010); *Albertson’s Inc. v. State Dep’t of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The Tax Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioner did not provide adequate evidence. As a result, the Commission will uphold the Notice.

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner’s sales and use tax liability for the period of June 1, 2013, through December 31, 2014.

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 April 28, 2017, 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 December 15, 2015, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$1,644	\$84	\$188	\$1,916

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

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

DATED this _____ day of _____, 2017.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2017 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.
