

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

In the Matter of the Protest of	)	
	)	
<b>[Redacted]</b>	)	DOCKET NO. 1-579-667-456
	)	
	)	
_____ Petitioner.	)	DECISION

On February 16, 2016, 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 September 1, 2015, through September 30, 2015, in the total amount of \$106,755.

On March 7, 2016, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission held an informal hearing on July 12, 2016. Present at the informal hearing were Commissioner **[Redacted]**, Deputy Attorney General **[Redacted]**, and Tax Appeals 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 modifies the Notice.

**Background and Audit Findings**

Petitioner contracted with a third party to assist in the sale of its <sup>[Redacted]</sup> Premier 1A aircraft, bearing manufacturer's serial number <sup>[Redacted]</sup> and Federal Aviation Administration (FAA) registration number **[Redacted]**, and the acquisition of a replacement aircraft, a <sup>[Redacted]</sup> Beechcraft King Air B200, serial number <sup>[Redacted]</sup> and FAA registration number <sup>[Redacted]</sup>

. The agreement specifies that the third party agreed to accommodate the sale of the <sup>[Redacted]</sup> and the purchase of the **[Redacted]** as a trade transaction on behalf of Petitioner. The agreement states that all documents and proceeds required for the transfer of title on both aircraft

will pass through the third party. The agreement also specifies that Petitioner will pay the third party \$25,000 for facilitating the transaction.

The settlement statement prepared by the third party gave Petitioner a trade in allowance that ultimately resulted in a trade down. As a result, no sales tax was paid on the acquisition of the [Redacted].

Aircraft	Totals
[Redacted] - New Aircraft	\$1,400,000
[Redacted] - Trade In	\$2,050,000
	\$(650,000)

The Bureau reviewed the transaction and disallowed the trade in allowance given to Petitioner by the third party based upon the following points:

1. The Bureau states that that Petitioner did not provide documentation showing that [Redacted] was used as payment for [Redacted].

2. The Bureau asserts that IDAPA 35.01.02.044.02 requires that “[t]he delivery of the trade-in and the purchase must be components of a single transaction” and that the sale and the purchase of the aircraft in question are not components of a single transaction because they occurred on different dates.

### **Relevant Tax Code**

In Idaho, a tax is imposed on the sale of tangible personal property unless an exemption applies, Idaho Code § 63-3612(1). Idaho retailers collect sales tax from the buyer and remit it to the state, Idaho Code § 63-3619. When a taxable sale is made by a vendor who is not obligated by law to collect Idaho sales tax, no tax is collected. Use tax, the complementary tax to sales tax, is due in these circumstances, and it is the responsibility of the Idaho resident to remit the tax to

the state, Idaho Code § 63-3621. The sales and use tax rates are identical, six percent of the purchase price, Idaho Code §§ 63-3619 and 63-3621.

When a sale or purchase is taxable, the sales price subject to tax is defined to include certain charges and omit others. Relevant to this decision is the trade-in allowance. Goods tendered by a buyer in exchange for other goods will lower the price subject to tax for the acquired goods if the tendered goods become part of the resale inventory of the seller. The value of the goods taken in trade are deducted from the price subject to tax, Idaho Code § 63-3613(b)2.

A trade-down occurs when the value of traded goods exceeds the price of the goods bought in the exchange. In this case, the price subject to tax is zero, as long as the higher-valued goods become part of the resale inventory of the receiver. As noted previously, Petitioner exchanged an aircraft valued at more than the aircraft Petitioner received. The difference was satisfied by cash received.

### **Petitioner's Protest**

Petitioner protested the Bureau's refusal to recognize trade-in allowance, asserting that the trade-in was valid and that the purchase and the sale in this case are components of a single integrated transaction. Petitioner states that the third party has contractually stipulated that all documents and proceeds required for the transfer of title on both aircraft will pass through it. Petitioner believes that because the third party is named as the seller in the settlement statements for both aircraft, this supports its stance that the third party took the aircraft into its inventory and resold them.

To refute the Bureau's stance that the timing of the sale of [Redacted] and the purchase of [Redacted] were not a single transaction, Petitioner uses the Step Transaction Doctrine. The Step Transaction Doctrine is a variation on the substance over form doctrine, designed to ensure

that transactions are taxed according to their substance regardless of their form. *C.I.R. v. Clark*, 1989-2 C.B. 68, 489 U.S. 726, 109 S. Ct. 1455, 103 L. Ed. 2d 753, 89-1 U.S. Tax Cas. (CCH) P 9230, 63 A.F.T.R.2d 89-860 (1989). By thus linking together all interdependent steps with legal or business significance, rather than taking them in isolation, the tax liability may be based on a realistic view of the entire transaction. Petitioner asserts that the agreement in this case meets all of the basic tests that define the criteria upon which application of the Step Transaction Doctrine applies--the interdependence test, the end result test, and the binding commitment test.

*Interdependence Test* - Requires an inquiry as to whether the steps were so interdependent that the legal relations created by one transaction would have been fruitless without a completion of the series. Petitioner reasons that the agreement makes clear the components were so interdependent that the legal relations created by one transaction would have been fruitless without a completion of the other transactions.

*End result test* - Examines whether it appears that separate transactions were really component parts of a single transaction intended from the outset to be taken for the purpose of reaching the ultimate result. Petitioner argues that the reasons for treating the components in this case as a single transaction are more compelling because the agreement between Petitioner and the third party identifies the two aircraft and specifically states the intention of the parties to complete a trade-down.

*The Binding Commitment Test* - Examines whether there was a binding commitment to undertake the later step in a series of transactions. Petitioner again references the agreement which has both aircraft identified in advance indicating a binding commitment to conduct both transactions.

## **Analysis**

For non-retailers who have no other exemption available to them, the trade-in allowance on their purchase is contingent on whether the business accepting the goods in trade will make them part of a resale inventory. If that party is a reseller and intends to take goods in trade that it will resell, the trade-in allowance for tax purposes is appropriate, Idaho Code § 63-3613(b)2.

The Commission shares the Bureau's concern about the validity of the trade in allowance that was given by the third party. The Aircraft Purchase and Acquisition Consulting agreement dated July 1, 2015, references both aircraft in it. The settlement statements provided by Petitioner were both dated after the July 1, 2015 contract was signed. The time that elapsed between the delivery of the first aircraft to the third party for purposes of a trade-in on July 24, 2015 and the ultimate taking possession of the aircraft from the third party on September 4, 2015 raises concerns that this was not part of a single transaction per IDAPA 35.01.02.044.02.

The Commission is most concerned about and does not agree that the third party in this case is a reseller that has taken goods into its inventory and then will resell per IDAPA 35.01.02.044.02. In this case, the third party has contractually agreed to accommodate the sale of the [Redacted] and the purchase of [Redacted] on behalf of Petitioner for a fee of \$25,000. The third party is only facilitating the transaction for Petitioner for a fee. The third party never took either aircraft into its inventory. The Commission does not believe that the third party, stipulating that all documents and proceeds required for the transfer of title on both aircraft will pass through it, changes the nature of the transaction. The Commission disallows the trade in added to the "settlement" statement by the third party and upholds the notice.

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 September 1, 2015, through September 30, 2015.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, found the interest 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. The Commission modified the failure to file penalty assessed by the Bureau to a negligence penalty.

THEREFORE, the Notice of Deficiency Determination dated February 16, 2016, 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>
\$84,000	\$4,200	\$4,920	<u>\$93,120</u>

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

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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.

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