

## In the Matter of the Protest of

Petitioner.

## DECISION

## Background and Audit Findings

The first purchase occurred on December 27, 2012. Petitioner purchased an aircraft with registration number [Redacted], herein referenced as the Cirrus, from [Redacted]. In conjunction with this purchase, Petitioner disposed of another aircraft, registration number [Redacted], which was sold to [Redacted].

The second purchase occurred on May 27, 2014. Petitioner commenced a tax-deferred 1031 exchange using 1031 EZ Exchange as a facilitator. The Cirrus was sold by Petitioner to a new owner, [Redacted]. Petitioner then purchased an aircraft with registration number [Redacted], herein referenced as the SR22, from [Redacted].

The Bureau mailed a questionnaire to Petitioner on August 19, 2015, to determine the taxability of the airplanes in Idaho. Petitioner responded to the request on September 29, 2015, and provided additional information regarding the transactions as well as payment for the amount of tax Petitioner believed was owed. The tax due shown on the Notice is based upon the amount claimed by Petitioner as a trade-in value on each aircraft.

### **Petitioner's Protest**

In the first transaction, Petitioner claims the taxable price of the Cirrus was reduced by the "trade-in" value of aircraft [Redacted], and that [Redacted] was formed by [Redacted] to facilitate the trade-in. The sales price of the Cirrus was \$522,500. The trade-in value claimed for aircraft [Redacted] was \$275,000, and Petitioner paid tax on the remaining \$247,500.

Petitioner posits the second transaction was a properly executed tax-deferred exchange under the provisions of Internal Revenue Code (I.R.C.) § 1031, and as such the Cirrus would be considered a trade-in as part of the exchange. The sales price of the SR22 was \$510,000. Petitioner claimed a trade-in value of \$465,000 for the Cirrus, and paid tax on the remaining \$45,000.

### **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 tax 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 includes certain charges and omits 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.

### **Analysis and Conclusion**

IDAPA 35.01.02.044 states the following:

**01. Trade-Ins.** A trade-in is the amount allowed by a retailer on merchandise accepted as payment for other merchandise. Merchandise is tangible personal property which is, or becomes, part of an inventory held for resale.

**02. Trade-In Allowance.** When a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in. To qualify for the trade-in allowance, the property traded in must be consideration delivered by the buyer to the seller. The sales documents, executed not later than the time of sale, must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. The delivery of the trade-in and the purchase must be components of a single transaction.

A trade-in allowance is contingent upon 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 sales tax purposes is appropriate. Idaho Code § 63-3613(b)2. The transactions in question are complicated by the number of parties involved. Details of each transaction are summarized in the following table (Exhibit 1):

[Redacted]

Redacted

[illegible][illegible]

In the first transaction, Petitioner sold its aircraft to [Redacted], which placed the aircraft into its resale inventory. However, the Cirrus subsequently purchased by Petitioner was not part of [Redacted] resale inventory, but sold by [Redacted]. Petitioner asserts that [Redacted] is in some way related to [Redacted]. However, given the jurisdiction and timing of the organization of [Redacted] this is unlikely. Even if [Redacted] and [Redacted] were related, they are separate entities. The Cirrus was not sold to Petitioner from [Redacted] resale inventory. Per IDAPA 35.01.02.044.02, “[W]hen a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in.” No trade-in allowance may be claimed by Petitioner for the value of the aircraft sold to [Redacted] because at a minimum the subsequent aircraft was purchased from a separate entity, [Redacted].

In the second transaction, 1031 EZ Exchange contractually agreed to accommodate the sale of the Cirrus and the purchase of the SR22 on behalf of Petitioner, and structured the transactions in a way that provided Petitioner a shelter from potential income tax consequences associated with a gain. Per IDAPA 35.01.02.044.02, “[W]hen a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in.” [Redacted] is the only entity shown under the facts presented to possibly qualify as a retailer holding inventory. However, none of the aircraft are either taken into, or sold from, [Redacted] resale inventory. IDAPA 35.01.02.044.02 also provides that, “[T]o qualify for the trade-in allowance, the property traded in must be consideration delivered by

the buyer to the seller.” In this instance no entity qualified as a seller. IDAPA 35.01.02.044.02 also requires that, “[T]he sales documents, executed not later than the time of sale, must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. The delivery of the trade-in and the purchase must be components of a single transaction.” Under the facts presented, at the time of the initial sale the documents did not identify the aircraft “being purchased and the trade-in property being delivered” and were not “components of a single transaction.” The acquisition and sale of each aircraft in this case was a separate transaction for the purposes of sales tax.

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 December 1, 2012, through December 31, 2012, and May 1, 2014, through May 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 August 15, 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 March 8, 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>
\$61,950	\$15,488	\$8,014	\$85,452
	Payment Effective 9/29/15		<u>\$(17,550)</u>
	Balance		<u>\$67,902</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

---

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.

---