

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	
[Redacted])	DOCKET NO. 39257
)	
Petitioner.)	DECISION
_____)	

On August 22, 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 May 1, 2013, through May 31, 2013, in the total amount of \$87,102.

On October 24, 2014, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner's request, the Commission held an informal hearing on October 13, 2016. Present at the informal hearing was 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 issues its decision to uphold the Notice.

Background and Audit Findings

The Bureau sent a routine inquiry to Petitioner on October 2, 2013, requesting information on the purchase of a [Redacted] Cessna 510 aircraft, bearing manufacturer's serial number [Redacted] and FAA registration number [Redacted].

Petitioner responded on December 13, 2013, stating that it had purchased the aircraft on May 27, 2013, from [Redacted] for \$1,942,720 less a trade-in amount of \$1,283,333 and voluntarily submitted a payment of \$39,563.22, for the use tax due on the netted amount. Petitioner was asked to provide additional documentation to substantiate the trade-in amount. What was provided revealed that the transaction was not a traditional dealership trade.

The Bureau found that Petitioner contracted with a third party to assist in the sale of its [Redacted] Cessna 550 aircraft, bearing manufacturer's serial number [Redacted] and FAA registration number [Redacted] equipped with two Pratt & Whitney Canada 530A engines bearing manufacturer's serial numbers [Redacted] collectively treated as one property [Redacted], and the acquisition of a replacement aircraft for a fee. The agreement specifies that the third party agreed to accommodate the sale of the [Redacted] and would identify a replacement aircraft within 45 days.

The third party successfully accommodated the sale of [Redacted] and found the replacement aircraft, [Redacted], within the specified amount of time meeting the terms of the contract. According to correspondence between Petitioner and the third party, the purpose of structuring the transaction the way that it did, was to ensure that it complied with the requirements for a "like kind" exchange under the United States Internal Revenue Code § 1031. A like kind exchange properly structured permits the deferral of certain federal taxes for property transfers that are channeled through a qualified intermediary. In this case, Petitioner would have been required to recognize a gain on the sale of [Redacted] if it had not been working with the third party to structure the transaction as a like kind exchange.

The Bureau reviewed the transaction and disallowed the trade in allowance claimed by Petitioner based upon the following points:

1. The Bureau asserts that IDAPA35.01.02.044.02 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.

2. The Bureau asserts that the contract stipulates that the title passed directly from seller to buyer and as a result, the aircraft never became part of an inventory held for resale per IDAPA35.01.02.044.02

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 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.

Petitioner's Protest

Petitioner disagrees with the Bureau's determination arguing that the "economic substance" of the transaction is the condensed amount. Petitioner also raised the argument that the buyer of the [Redacted], purchased the aircraft for resale and later sold that aircraft to a third party in Mexico asserting that somehow the buyer could give the trade-in credit to the Petitioner.

Analysis and Conclusion

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 concerns about the validity of the trade-in allowance claimed by Petitioner.

For a fee, the third party contractually agreed to accommodate the sale of the [Redacted] and the purchase of the [Redacted] on behalf of Petitioner and structure the transactions in a way that provides a shelter from potential income tax consequences that would be associated with a gain.

What has not been made clear to the Commission is why Petitioner thinks that this structure in some way allows it to deduct the value of the aircraft sold from the purchase price of the replacement aircraft when paying the tax due on the transaction.

Petitioner argued to the Commission that the “economic substance” of the transaction is the condensed amount. The Commission disagrees with this argument. The sale of each aircraft in this case is a separate transaction for the purposes of sales tax.

The first transaction was the sale of [Redacted] between Petitioner to [Redacted], a Texas corporation. The sale was facilitated by a third party, however title passed directly from Petitioner to [Redacted]. The Bureau determined that this sale was not subject to sales tax based upon Petitioner's assertion that [Redacted] purchased the aircraft with the intent to resell the aircraft or because [Redacted] is a non-resident corporation.

The second transaction was the sale of [Redacted] between [Redacted], an Alabama corporation and Petitioner. The sale was facilitated by a third party, however title passed directly

from [Redacted] to Petitioner. Petitioner reported to the Bureau that it purchased this aircraft from [Redacted] on May 27, 2013, and that no sale tax was paid at the time of purchase. Petitioner also reported that the aircraft would not be used in an exempt capacity and voluntarily paid sales tax on the purchase price less the trade-in claimed. The Commission disallows the trade-in claimed by Petitioner 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 tax and use tax liability for the period May 1, 2013, through May 31, 2013.

The Bureau added interest and penalty to the sales tax 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 July 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 August 22, 2014, 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>
\$116,563	\$5,828	\$16,483	<u>\$138,874</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.
