

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

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Petitioner.

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DOCKET NO. 0-105-877-504

DECISION

On August 17, 2015, the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to ██████████ (Petitioner), proposing use tax, penalty, and interest for July 2012 in the total amount of \$61,568.

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On October 14, 2015, Petitioner’s representative, ██████████, filed a timely appeal and petition for redetermination of the Notice. The Commission mailed Petitioner hearing rights letters on January 4, 2016, and May 2, 2016. ██████████ responded on May 31, 2016, and stated Petitioner did not wish to have an informal hearing but would submit additional documents by July 15, 2016. ██████████ submitted a notarized statement from Petitioner on July 11, 2016. In September 2018, the Commission attempted to contact ██████████ regarding Petitioner’s protest; however, the Commission was unable to locate a business telephone number or email address for ██████████, and a message left on his cell phone was not returned. The Commission then contacted Petitioner in September 2018, and again in February 2019. Petitioner indicated ██████████ advised him that the protest was resolved several years ago. Petitioner reported that his recent attempts to contact ██████████ were unsuccessful, and in March 2019 Petitioner authorized ██████████ to represent him in this matter. ██████████ contacted the Commission in May 2019 regarding a potential settlement offer to resolve Petitioner’s protest. However, neither Petitioner nor ██████████ ever submitted a settlement offer for the Commission to consider, and on May 20, 2019, ██████████ advised the Commission he no longer had valid contact information for Petitioner. At

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that time, the Commission advised [REDACTED] that a decision in this matter would be forthcoming, and [REDACTED] responded that he would advise his client if he was ever able to reach Petitioner. Petitioner has not contacted the Commission since.

Having reviewed the audit file and the protest letter, the Commission hereby upholds the Notice.

Background and Audit Findings

On July 24, 2012, Petitioner purchased a 1982 Beech B200 aircraft, FAA registration [REDACTED] J, serial number [REDACTED]. Petitioner sold [REDACTED] to an unrelated entity in March 2014.

On December 12, 2012, the Bureau mailed a questionnaire to Petitioner regarding its purchase and intended use of [REDACTED]. Petitioner returned the completed form on January 14, 2013, and indicated no sales tax was paid at the time of purchase because the aircraft was used primarily to transport passengers or freight for hire, and therefore the transaction was exempt. The Bureau requested additional records to verify how the aircraft was used; however, Petitioner did not provide any additional information. The Bureau could not substantiate that Petitioner's purchase of [REDACTED] qualified for an exemption and issued a Notice for use tax due on the purchase price of [REDACTED], plus penalty and interest.

Petitioner's Protest

Petitioner contends its purchase of [REDACTED] is exempt from sales tax and use tax per Idaho Code § 63-3622GG because it was operated by a common carrier to transport passengers and property for hire indiscriminately to the public.

Relevant Tax Code and Analysis

Idaho Code § 63-3621 imposes use tax on all tangible property brought into Idaho unless an exemption applies. The use tax is complementary to the sales tax, which imposes tax on the retail sale of tangible personal property within Idaho. If the seller of goods fails to, or cannot, charge sales tax and no exemption applies, the buyer is obligated to pay a use tax directly to the state. Idaho Code § 63-3621.

Sales of aircraft are taxable unless an exemption applies. IDAPA 35.01.02.037.02. Idaho Code § 63-3622GG provides:

There is exempted from the taxes imposed by this chapter:

- (1) The sale, lease or purchase 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.

The sale of an aircraft primarily used to transport passengers or freight for hire is exempt from sales tax and use tax. IDAPA 35.01.02.037.02.a.

IDAPA 35.01.02.037.01.g specifies the aircraft services which would qualify for the exemption.

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.

IDAPA 35.01.02.037.01.g. Effective 3-4-2010.

The Bureau mailed a letter to Petitioner on February 18, 2014, requesting additional records to document the exemption claimed on its purchase of [REDACTED]. Petitioner responded promptly and

requested the Bureau's inquiry be held in abeyance, as Petitioner had an unresolved protest on a similar transaction (Docket No. 25572) pending before the Commission. The Bureau agreed to Petitioner's request on March 3, 2014. The Bureau and Petitioner stayed in contact sporadically between March 2014 and April 2015. By August 2015, Petitioner's protested matter was still unresolved, the three-year statute of limitations for issuing an assessment regarding Petitioner's purchase of ██████ was set to expire, and Petitioner had not provided any documents to substantiate the exemption claimed on ██████. The Bureau emailed Petitioner a waiver to allow additional time to provide records for ██████, and left telephone messages for Petitioner to discuss the matter. Petitioner did not return either the waiver or the Bureau's messages; therefore, the Bureau issued the Notice prior to the expiration of the statute of limitations.

Petitioner's protest letter did not include any of the records requested by the Bureau. The only documentation received for the Commission to consider is a notarized affidavit from Petitioner dated July 11, 2016. In the affidavit, Petitioner states that ██████ was placed with another entity, ██████ ██████ for charter operations. Petitioner asserts that ██████ chartered ██████, and used ██████ to provide services indiscriminately to the public. Petitioner also provides that it chartered ██████ through ██████ for its own business travel, and contends it remitted Idaho sales tax to ██████ for those transactions.

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 Commission*, 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 Commission*, 108 Idaho 147, 697 P.2d 1161 (1985); *Canyon County v. Sunny Ridge Manor, Inc.*; *Leonard Constr. Co. v. State Tax Commission*, 96 Idaho 893, 539 P.2d 246 (1975).

Petitioner has not provided any records to substantiate the exemption claimed under Idaho Code § 63-3622GG and IDAPA 35.01.02.037. Therefore, the Commission finds Petitioner's purchase of [REDACTED] is subject to use tax.

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) (citing *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 use tax liability for July 2012.

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 October 31, 2019, 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 17, 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> |
|------------|----------------|-----------------|-----------------|
| \$45,000 | \$11,250 | \$12,507 | <u>\$68,757</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 _____, 2019.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2019 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:

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Receipt No.

Copy to

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