

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

In the Matter of the Protest of \_\_\_\_\_ )  
 )  
 , ) DOCKET NO. 1-164-634-112  
 )  
 Petitioner. ) DECISION  
 \_\_\_\_\_ )

On October 5, 2020, 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, plus interest and penalty for the period of February 1, 2020 through April 30, 2020 in the total amount of \$7,033.

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

**Background and Audit Findings**

On May 19, 2020, the Bureau sent a letter to \_\_\_\_\_ the listed manager for Petitioner (Manager) enquiring about the purchase of a \_\_\_\_\_ aircraft with registration \_\_\_\_\_ and serial number \_\_\_\_\_ (Aircraft), to ask about whether the Aircraft was in compliance with Idaho sales tax code and rules. The reasons the enquiry was sent were the following:

- Manager filed Idaho resident individual income tax returns for 2018 and 2019.
- Manager maintained an Idaho driver's license from February 2006 through current.
- Manager obtained Idaho resident Fish & Game licenses in the years 2000 through 2002, 2004 – 2005, 2008, 2014 and 2018. The licensing information indicates Idaho residency since September 30, 1952.
- Flightaware.com<sup>1</sup> shows the aircraft had been flown into Idaho Falls.

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<sup>1</sup> Taken from the website of <http://www.flightaware.com>, “FlightAware provides accurate real-time historical and predictive flight insights to all segments of the aviation industry,”

After receiving no response, the Bureau sent another letter on July 2, 2020. On August 5, 2020, a letter was sent to Petitioner requesting payment of use tax and interest or additional documentation to support if the purchase of the Aircraft was exempt. Petitioner did not respond and a Notice was sent on October 5, 2020. On November 25, 2020, Manager, filed a timely appeal and petition for redetermination of the Notice.

The Appeals Unit (Appeals) sent contact letters to Petitioner on November 5, 2021 and March 7, 2022. Petitioner's representative, (Representative), contacted Appeals with a Power of Attorney on November 18, 2021.

After Representative contacted Appeals, Appeals requested the following information from Representative:

- Information showing where the Aircraft was hangered?
- Was the Aircraft certified as FAA Part 91 or 135?
- When the Aircraft was flown in Idaho, was use tax accrued or remitted?

Representative was unable to provide the information, even after further requests on the following dates:

- December 3, 2021
- December 27, 2021
- February 7, 2022
- March 14, 2022
- June 15, 2022

### **Petitioner's Protest**

Petitioner contends, since they are an Oregon limited liability company, the purchase of the Aircraft was exempt.

### **Relevant Tax Code and Analysis**

Idaho Code section 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.

Appeals made multiple attempts to enquire where the Aircraft was hangered. Idaho Code § 63-3042 states:

**EXAMINATION OF BOOKS AND WITNESSES.** For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax payable under this act or the liability at law or in equity of any person in respect to any tax provided in this act or collecting any such liability, the state tax commission or its duly authorized deputy is authorized--

(a) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(b) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the commission or its deputy may deem proper, to appear before the commission or its delegate at a time and place named in the summons and to produce such books, papers, records or other data and/or give such testimony, under oath, as may be relevant or material to such inquiry; and taxpayers whose pertinent records are kept outside of the state must bring such records to Idaho for examination by the state tax commission upon request by it or a deputy, or, by agreement with the state tax commission, permit an auditor designated by the state tax commission to visit the place where the records are kept and there audit such records; and

(c) To take such testimony of the person concerned or summoned, under oath, as may be relevant or material to such inquiry.

A summons issued under the provisions of this section may be served by the state tax commission or its deputy or by any other person authorized to serve process under the laws of this state by a copy delivered in and to a person to whom it is directed; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

The time and place of examination pursuant to the provisions of this section shall be such time and place as may be fixed by the state tax commission or its deputy and as are reasonable under the circumstances, provided that in the case of a summons the date fixed for appearance before the state tax commission or its deputy shall not be less than twenty (20) days from the time of service of the summons.

No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations.

Petitioner was unable to show verification of whether the Aircraft qualified for any exemptions as discussed in Idaho Code section 63-3622GG:

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.

Furthermore, IDAPA 35.01.02.037.02a discusses the examples as to how the Aircraft would be exempt based on the following:

Primarily used to provide passenger or freight services for hire as a common carrier;

i. Example 1: An aircraft is flown for the following activities: the aircraft owner's personal vacations, flight instruction, and charter operations for hire as a common carrier. The flight hours for each activity are forty-five (45), sixty-five (65) and seventy-five (75) hours respectively in a consecutive twelve (12) month period. The combined flight hours for the taxable uses of the aircraft, owner and flight instruction, ( $45 + 65 = 110$  hours) are more than the hours operating as a common carrier (75 hours). Since the greater use of the aircraft is performing activities that do not qualify for an exemption, the use of the aircraft will be taxable at fair market value as of that point in time.

ii. Example 2: A charter aircraft service uses an aircraft for three purposes: flight instruction, air ambulance service, and charter flights operated as a common carrier. The flight hours for each activity are one hundred (100), sixty (60) and fifty (50) respectively in a consecutive twelve (12) month period. The combined flight hours for the exempt uses of the aircraft, as an air ambulance and as a common carrier ( $60 + 50 = 110$  hours), are more than the hours used for flight instruction one hundred (100) hours. Since the greater use of the aircraft is performing activities that qualify for an exemption, the use of the aircraft will be exempt.

Petitioner has not provided any records to substantiate the exemption claimed under Idaho Code section 63-3622GG and IDAPA 35.01.02.037. Therefore, the Commission finds Petitioner's purchase of the Aircraft 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 the period of February 1, 2020 through April 30, 2020.

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 sections 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through October 30, 2022 and will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated October 5, 2020, 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>
\$6,000	\$900	\$489	\$7,389

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2022,  
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:

Receipt No.

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