



Owners. Petitioner did not report or pay use tax for the lease payments during the audit period. The Bureau gave Petitioner a credit towards the tax liability for the net taxable sales reported on Owners' returns.

### **Petitioner's Protest**

Petitioner asserts that no sales tax or use tax is due for flight instruction which was exempt as a fully operated equipment rental per IDAPA 35.01.02.024. Since the supplied aircraft is of no value to the customer without the operator, Petitioner asserts the equipment rental is a service rather than a retail sale and no sales tax or use tax is due on the fully operated equipment rental. The rental of the aircraft between the flight school and the flight students was not held taxable by the Bureau.

Secondly, Petitioner contends the customers paid for fuel and other expenses, and the net revenue to Owners was in essence a "dry" or "triple net" rental agreement and should be taxed at the dry rental rate. This is discussed at length in the Relevant Tax Code and Analysis.

Lastly, Petitioner contends their management fee is a service and should not be included in the taxable rate used by the Bureau; however, the Bureau did not hold the management fees taxable in the audit. Therefore, this portion of the protest will not be addressed further.

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

Owners are leasing aircraft without operators to Petitioner. The aircraft are used primarily in flight instruction. The lease of an aircraft without an operator is a sale subject to sales tax. IDAPA 35.01.02.037.05. Also, IDAPA 35.01.02.037.08(a),(b) states, "aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales tax or use tax. When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to

provide the service.” Since Petitioner runs a flight school and the aircraft are leased primarily for flying instruction, Petitioner’s aircraft rentals paid to the Owners are held taxable.

Petitioner also contends the net revenue to Owners should be taxed at the dry rental rate because the customers paid for fuel and other expenses. Industry practice determines the difference between a dry lease and a wet lease by the crew a lessor provides. A dry rental is a lease without a flight crew. The dry rental is not defined by the person making the payment of certain expenses as indicated in Petitioner’s protest. The Bureau agrees that Owners did not provide a flight crew in the rentals to Petitioner.

Petitioner also indicated these rental agreements were “triple net” leases. In a triple net lease, industry practice generally holds the lessee responsible for the taxes, insurance, maintenance and repair of the aircraft arising from the use and operation of the aircraft during the term of the lease. However, the monthly billing statements provided by Petitioner show Owners are billed for fuel, oil, maintenance, insurance, and hangar fees. These expenses are included in the total sales price subject to tax.

Sales tax is levied on all sales or rentals of tangible personal property and the corresponding use tax is levied on the storage, use, or other consumption in this state of tangible personal property. Idaho Code §§ 63-3619, 63-3621. The sales tax or use tax is due on the total sales price of tangible personal property unless an exemption applies. The term “sales price” is defined as the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, without any deduction on account of the cost of materials used, labor or service cost, losses, or any other expense, Idaho Code § 63-3613(a). Thus, the fuel, maintenance, and other expenses are included in the total sales price of the lease and are held taxable.

**Conclusion**

On appeal, a deficiency determination issued by the 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 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 upholds 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 January 1, 2013, through December 31, 2014.

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 February 28, 2018, 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 December 11, 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>
\$4,204	\$210	\$660	<u>\$5,074</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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