

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

In the Matter of the Protest of

██████████

Petitioner.

---

)  
)  
)  
)  
)  
)

DOCKET NO. 25572

DECISION

On January 4, 2013, 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 and interest for the period January 2010 through December 2010, in the total amount of \$77,198.

On March 8, 2013, Petitioner’s representative, ██████████, filed a timely appeal and petition for redetermination of the Notice. The Commission mailed Petitioner a hearing rights letter on January 29, 2014. ██████████ responded on February 5, 2014, and requested a hearing; however, a hearing was never scheduled. The Commission left telephone messages for ██████████ on November 20, 2014, and December 23, 2014, requesting Petitioner’s availability for a hearing. ██████████ did not return either call. On January 21, 2015, ██████████ verbally requested the Commission issue a decision in this matter based upon the protest. The Commission and ██████████ exchanged telephone and email communications between August 2015 and November 2015. On November 15, 2015, ██████████ requested one week to submit a written argument regarding the protest. There was no further communication from ██████████. 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 that time, the Commission advised ██████████ that a decision in this matter would be forthcoming, and ██████████ 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 December 31, 2009, Petitioner purchased a 2005 Piper PA46-500TP, FAA registration ██████████ serial number ██████████. Upon acquisition of the aircraft, Petitioner entered into an agreement with ██████████ a commercial carrier licensed with the FAA, to use the aircraft in its charter operations. Petitioner sold ██████████ to an unrelated entity in August 2011.

In September 2011, the Bureau requested Petitioner's flight logs for ██████████ to determine if the aircraft qualified for an exemption from sales tax and use tax. After examination of Petitioner's flight logs, the Bureau determined no such exemption applied, as most of the hours flown were to transport Petitioner and his guests. The Bureau issued a Notice for use tax due on the purchase price of ██████████, plus interest.

### **Petitioner's Protest**

Petitioner contends its purchase of [REDACTED] is exempt from sales tax and use tax per Idaho Code § 63-3622GG as the aircraft was managed by [REDACTED], a common carrier, to provide passenger services for hire.

### **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. For purposes of this rule, "transportation of freight or passengers for hire" means the business of transporting persons or property for compensation. Such transportation must be offered 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 3-30-2007.

Petitioner provided flight logs for ██████ for the period January 2010 through August 2011. These logs indicated ██████ was flown 357 hours during the period. 22.2 hours are designated as maintenance and training flights. Of the 334.8 hours during which passengers were transported, ██████ customers flew 86 hours (25.69%). The remaining 248.8 flight hours (74.31%) are attributed to flights transporting Petitioner, Petitioner's employees, and parties related to Petitioner.

██████ holds a Part 135 air carrier certificate issued by the FAA, which allows ██████ to transport freight or passengers for hire as a common carrier. On December 31, 2009, Petitioner entered into a lease agreement (Contract) with ██████. The Contract requires ██████ to provide certain services related to holding ██████ out to the public as available for charter, including scheduling flights, collecting payments, conducting aircraft maintenance, carrying insurance, and supplying pilots. Per the Contract, Petitioner was required to pay for fuel, parts and labor for aircraft maintenance, and cleaning charges. The Contract specified that ██████ would charge customers \$850 per flight hour for charter flights, and pay Petitioner \$750 for each charter flight hour.

Petitioner entered into an Aircraft Services Agreement (Agreement) with ██████ on October 15, 2009, prior to acquiring ██████. The Agreement specified that ██████ was Petitioner's "corporate flight department", and would provide flight services to Petitioner, Petitioner's employees, and Petitioner's customers. Per the Agreement, Petitioner paid ██████ \$2,500 per month, and in return received flight scheduling, trip planning, and pilot services. The Agreement states "Availability of pilots and above services will be available to [Petitioner] 24

hours/day, 7 days/week”. Per the Agreement, ██████ billed Petitioner \$750 for each flight hour Petitioner used the aircraft.

Idaho Code § 63-3622 provides an exemption is available if the primary use of an aircraft is providing qualifying transportation services for hire to the public. As stated in IDAPA 35.01.02.037.01.g, use by the aircraft owner and related parties does not qualify as transporting passengers or freight for hire. Petitioner’s 2010 income tax return specifies that it operates a charter airplane rental business which “provides charter airplane rental primarily for the Taxpayer’s S-corporation...”. Flight logs provided by Petitioner document that over 74% of the charter hours flown by ██████ were transporting Petitioner and related parties, rather than members of the public. These hours do not qualify as an exempt activity, even if all operations of ██████ were managed by ██████. Petitioner and its related parties were the primary user of the aircraft, not ██████ charter customers. There is no exemption available to Petitioner, and the purchase of ██████ is subject to use tax.

### **Conclusion**

The Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner’s use tax liability for the period January 1, 2010, through December 31, 2010.

The Bureau added interest to the use tax deficiency. The Commission reviewed this addition, found it to be appropriate per Idaho Code § 63-3045, 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 January 4, 2013, 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 and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$68,400	\$0	\$26,318	<u>\$94,718</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:

██████████  
██████████  
██████████  
██████████

Receipt No.

Copy to

████████████████████  
████████████████████  
██████ ██████████  
████████████████

\_\_\_\_\_