

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

In the Matter of the Protest of )

[Redacted] )

Petitioner. )

DOCKET NO. 1-562-503-168

DECISION

On October 22, 2018, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] [Redacted] (Petitioner), proposing use tax, penalty, and interest for the period June 1, 2017, through July 31, 2018, in the total amount of \$50,588.

On October 8, 2018, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner’s request, the Commission held an informal hearing on November 13, 2019. After the informal hearing, Petitioner provided additional documentation on December 9, 2019.

The Commission, having reviewed the contents of the audit file as well as information presented at the informal hearing and thereafter, hereby cancels the Notice for the reasons that follow.

**Background and Audit Findings**

Petitioner is an LLC which owns a 2017 Bombardier Challenger 350, model BD-100-1A10, FAA registration [Redacted], serial number [Redacted]. The aircraft was purchased on April 27, 2017, for \$20,506,350. Petitioner subsequently leased the aircraft to [Redacted] [Redacted] for \$4,650 per hour, for use in [Redacted] charter operations.

The Bureau mailed Petitioner a letter on July 20, 2017, and requested information regarding Petitioner’s purchase and intended use of the aircraft. Petitioner responded to the Bureau, and indicated the aircraft is primarily utilized to transport passengers for hire. In support of this position, Petitioner supplied a copy of the sales invoice, which confirmed no sales tax was paid at

the time the aircraft was acquired. Petitioner also provided a copy of [Redacted] and aircraft listing, which included [Redacted] as part of [Redacted] fleet. The Bureau closed its inquiry into [Redacted] on July 25, 2017, without imposing any liability.

The Bureau contacted Petitioner again on August 7, 2018, to determine if [Redacted] qualified for the exemption from sales tax and use tax claimed in 2017. Petitioner responded, and provided copies of [Redacted] log books, maintenance logs, and monthly statements from [Redacted]. The Bureau noted that of the 718.3 hours flown during the audit period, 555.4 were attributed to [Redacted] customers; 18.8 were attributed to training or maintenance flights; and 144.1 hours were flown on behalf of Petitioner. 2.6 of the hours flown for Petitioner were flights that did not depart or arrive in Idaho; the Bureau held the remaining 141.5 hours attributed to Petitioner subject to use tax at the hourly rate negotiated with [Redacted], \$4,650 per hour. A 25% non-filer penalty, and interest as required by statute, were imposed on the Notice.

### **Petitioner's Protest**

Petitioner contends that it uses [Redacted] occasionally for personal use when it is not scheduled with [Redacted], but that such use is not subject to tax because the aircraft is primarily used to provide passenger or freight services for hire as a common carrier.

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

In Idaho, a tax is imposed on the sale of tangible personal property unless an exemption applies. Idaho Code § 63-3612(1).

Idaho Code section 63-3622GG provides:

AIRCRAFT. There is exempted from the taxes imposed by this chapter:

- (1) The sale, lease, purchase, or use 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. (Emphasis added.)

Idaho Code section 63-3607A specifies:

PRIMARY OR PRIMARILY. (1) With respect to the use of tangible personal property, "primary" or "primarily" means the predominant or greatest use of the property.

(2) In determining the primary use of tangible personal property, all uses of the property shall be aggregated into total taxable uses and total nontaxable uses pursuant to the provisions of this chapter. The primary use shall be the greater of the total taxable use or total nontaxable use.

(3) The use of tangible personal property shall be measured in terms of hours, miles, gallons or other measure commonly or customarily used to measure or determine use of the property.  
Idaho Code § 63-3607A. (Emphasis added).

In this instance, Petitioner purchased [Redacted] for resale, and leased the aircraft to [Redacted] for use in its charter fleet. [Redacted] provides charter services indiscriminately to the public, in accordance with the laws of the United States, to transport passengers from one location to another. This is evidenced by [Redacted] inclusion of [Redacted] on its FAA Part 135 certificate, which indicates Delta is operating flights using [Redacted] for compensation or hire. So long as the primary use of [Redacted] is by [Redacted] in its charter operations, the exemption set forth in Idaho Code section 63-3622GG applies.

IDAPA 35.01.02.037.02.a.ii provides an example illustrating taxable and nontaxable uses of an aircraft. In this example, an aircraft is flown 110 hours for exempt uses, and 100 hours for taxable purposes. This example concludes "Since the greater use of the aircraft is performing activities that qualify for an exemption, the use of the aircraft will be exempt." IDAPA 35.01.02.037.02.a.ii.

During the period covered by the Bureau's audit, [Redacted] was flown a total of 718.3 hours. Of these hours, 555.4 (77.32%) were flown to transport [Redacted] customers. Petitioner utilized

the aircraft for 146.7 hours (20.42%) during this period. Because the primary use of the aircraft was exempt from sales tax and use tax, the Commission finds that no use of the aircraft is taxable in the period covered by this audit pursuant to Idaho Code section 63-3622GG and IDAPA 35.01.02.037.02.a.

### **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 provided sufficient evidence. As a result, the Commission will cancel the Notice.

THEREFORE, IT IS ORDERED that the Notice of Deficiency Determination dated October 22, 2018, is hereby CANCELED.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 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.

[Redacted]

[Redacted]

[Redacted]

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