

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

In the Matter of the Protest of	)	
	)	DOCKET NOS. 0-958-104-576 &
	)	1-492-026-368
	)	
Petitioner.	)	DECISION
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(Petitioner) protested two Notices of Deficiency Determination (Notices) issued by the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Tax Commission). The Notices cover the audit period from January 1, 2018 to December 31, 2020 (Audit Period), and set forth a total liability of tax, penalty, and interest in the amount of \$6,833. The Tax Commission hereby upholds the Bureau’s findings, as detailed below.

**Background and Audit Findings**

Petitioner owns and operates a 2015 Robinson Helicopter Model R66, tail number and serial number (Helicopter) registered under Part 91 of the Federal Aviation Administration (FAA).<sup>1</sup> Petitioner is owned entirely by The Bureau became aware of the Helicopter’s presence in Idaho and reached out to Petitioner on December 2, 2020, with a request for information about the Helicopter.

The Bureau initially requested documentation for the period February 1, 2019 through March 31, 2021. However, the Bureau adjusted the review period after receiving a FAA report showing Petitioner purchased the Helicopter from another entity owned by

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<sup>1</sup> Part 91 of Title 14 of the Code of Federal Regulations is a Regulation created by the FAA to govern private, aircraft, or in other words, aircraft that are not provided by commercial charter.

Mr. [REDACTED] for an undisclosed amount in 2018. Therefore, the Bureau set the beginning of the review period to January 1, 2018.

Petitioner responded by reporting that it received rental income from leasing the Helicopter during the Audit Period. After the audit was initiated, Petitioner applied to receive a seller's permit on April 23, 2021 and on April 26, 2021 received its seller's permit. On April 28, 2021, the Tax Commission received a sales tax return for the period of January 1, 2021, through March 31, 2021. Petitioner and the related entities the Helicopter was leased to, including

are owned by Mr. [REDACTED] was the pilot of the Helicopter for all leases of the Helicopter to any related entity.

When the Bureau initiated the Audit, it requested flight logs, invoices for hangar rentals, lease agreements for the Helicopter, documentation of lease payments received by Petitioner for the Helicopter, and evidence of sales or use tax paid on the Helicopter. Petitioner responded by providing the information it had, which included flight logs showing the Helicopter was flown for a total of 225.3 hours from January 1, 2018 through March 31, 2021, as a Part 91 operator. The flight logs state the pilot operating the Helicopter, the date, and the amount of time the Helicopter was used. Though Mr. [REDACTED] is listed as the pilot on the flight log, the company in which he is serving as a pilot for is not listed.

In addition, Petitioner provided a total of four invoices for the Helicopter. Two of the invoices covered 6.5 hours of flight time at the rate of \$525 per hour, one invoice covered 10 hours of flight time at \$235 per hour and another invoice covering 138.8 hours of flight time at the rate of \$250 per hour. The invoice for 138.8 hours was for lease of the Helicopter to

Therefore, there were about 70 hours of flight time not accounted for by the invoices provided, in which the Bureau ultimately assigned a fair market rental rate of \$525 per hour based



mail would be sent to Petitioner's representative clearly outlining the specific information needed to finish the review. However, overall, no new information was received from Petitioner after the email was sent requesting additional information.

The Tax Commission, having reviewed all documentation and information provided, hereby issues its decision upholding the Notices.

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

A Notice of Deficiency Determination issued by the Tax Commission is presumed to be accurate. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The burden is on Petitioner to show the deficiency is erroneous. *Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). Overall, Petitioner did not provide adequate documentation to show the Bureau's determination was incorrect.

Idaho Code section 63-3624(c) details a taxpayers' requirement for records retention in Idaho and states:

(c) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers as the state tax commission may require. Every such seller, retailer or person who files the returns required under this act shall keep such records for not less than four (4) years from the making of such records unless the state tax commission in writing sooner authorizes their destruction.

Further, Idaho Code section 63-3624(e) authorizes the Tax Commission to examine Petitioner's books and records to verify the validity of claims made to ascertain the proper amount of tax due for the period reviewed, and states:

(e) The state tax commission, or any person authorized in writing by it, may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return

made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

During the pendency of the audit and appeal, Petitioner was asked numerous times to provide financial records and supporting documentation in which to verify the information that was provided to substantiate and explain the documentation that was provided. Although Petitioner did provide flight logs for the Audit Period, four invoices, and one written lease agreement between the related parties that was backdated, this documentation alone did not account for all the flight time logged for the Helicopter. Further, the documentation that was provided was missing information which led to additional questions which were left unresolved by Petitioner throughout the duration of the audit and appeal.

Overall, Petitioner's position was that the Tax Commission was provided all the records it needed to verify the lease transactions involving the Helicopter during the Audit Period. However, with the information provided, the Tax Commission could not verify the information provided by Petitioner, including the "operational control" of the Helicopter during use of the Helicopter. Also, the Tax Commission was unable to validate the retail lease price charged by Petitioner to its lessees.

The Bureau made a determination the fair market rental value for the Helicopter was \$525 per hour based on industry standards for rental of similar helicopters involving related party entities and including a pilot, or what is a "Wet Lease" in the aircraft industry. The Bureau had the right to make this determination according to Sales and Use Tax Administrative Rule 99.06 (IDAPA 35.01.02.099.06), which sets forth that a lease between related parties shall represent a reasonable rental value for the asset.

Petitioner disagreed this value was correct. Instead, Petitioner argued that the Helicopter may be leased or rented to other entities by means of a "Dry Lease". Dry leases are for the aircraft

only and transfer operational control or piloting of the Helicopter to the lessee. Petitioner related that the written lease that was provided reflected a dry lease rate for the Helicopter of \$250 per hour, which should be applied to the flight hours logged.

However, the documentation provided counters that the Helicopter use was for used as a “Dry Lease” arrangement for the entirety of the Helicopter’s use. Specifically, the invoices and flight log provided show that Mr. [REDACTED] was the pilot for most of the leases. Of the 174 flight log entries, Mr. [REDACTED] was the pilot for 170 of those hours. The flight logs provided by Petitioner only show who was piloting the Helicopter, date & duration of the flight, and a brief note in the “Where & Why” column. The notes are in shorthand and do not clarify for which entity or lessee that Mr. [REDACTED] operated the Helicopter. Confusing the issue more is the fact Mr. [REDACTED] is the sole owner of Petitioner and the related entities that leased the Helicopter. Regardless, if Mr. [REDACTED] was the pilot for a majority of the lease use, a reasonable conclusion that the Bureau made was that the Helicopter leases included payment for the pilot which would be a “Wet Lease” arrangement.

Petitioner did provide one written lease agreement that was between Petitioner and [REDACTED] with a “Dry Lease” rate of \$250. This lease agreement effective date was May 2018, but it was signed in May 2021, after a majority of the lease transactions took place. After the lease agreement was provided, Petitioner stated that this written lease was only a sample lease. No further written lease agreements were provided concerning the Helicopter with any other entity. Petitioner stated that there were oral lease agreements in place regarding use of the Helicopter. However, Petitioner did not provide clear details to explain the terms of those oral lease agreements, including the party names and price terms. Petitioner did not provide any financial documentation, finance statements, or any sales journals in order to validate sales amounts stated in the four invoices provided. Finally, the invoices that were provided were in word



IT IS ORDERED that Petitioner pay the following tax, penalty, and interest:

	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
	\$6,414	\$1,602	\$667	\$8,683
Payment 04/28/22	(2,081)	(312)	(11)	(2,404)
			TOTAL DUE	\$6,833

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 \_\_\_\_\_ 2024.

IDAHO STATE TAX COMMISSION



**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2024,  
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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