

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-068-639-232
	)	
Petitioner.	)	DECISION
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(Petitioner) protested the Notice of Deficiency Determination (Notice) issued by the staff of the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Tax Commission). The Notice proposed sales tax, penalty, and interest for the audit period December 1, 2021, through December 31, 2021, in the amount of \$17,721. The Tax Commission hereby upholds the Notice for the reasons detailed below.

**Background and Audit Findings**

Petitioner is a single member LLC holding company created for the ownership of a fixed asset, an American Champion aircraft model 8GCBC, with tail number \_\_\_\_\_ and serial number \_\_\_\_\_ (American Champion). The Bureau sent Petitioner a request for information letter (RFI) to help determine if Petitioner owed sales or use tax on the purchase of the American Champion. The Bureau also requested the American Champion’s registration information from the Federal Aviation Administration (FAA).

The Bureau received a response to the RFI from Petitioner along with a check for \$600. The RFI showed Petitioner purchased the American Champion from

on December 20, 2021, for \$270,000. As part of the purchase, Petitioner received a trade-in allowance of \$260,000 for a 1979 Cessna model 340A, with tail number \_\_\_\_\_ and serial number \_\_\_\_\_ (Cessna), owned by \_\_\_\_\_ a Montana LLC. Petitioner’s payment of

\$600 was paid as use tax on \$10,000, the purchase price of the American Champion after subtracting the amount allowed for trade-in of the Cessna.

The Bureau reviewed the information provided by Petitioner, along with information received from the FAA, and issued the Notice on March 1, 2023, denying the trade-in allowance and asserting additional use tax. Petitioner appealed the Notice arguing the trade-in portion of the sale should be allowed under the occasional sales exemption. The Bureau acknowledged the protest and sent the file to the Tax Commission Appeals Unit (Appeals) for administrative review. Appeals sent Petitioner a letter outlining the options for redetermining a Notice. Petitioner responded, requesting an informal hearing. Petitioner explained during the informal hearing that

owns both Petitioner and Both Petitioner and are disregarded financial entities created and owned by as holding companies for aircraft.

Overall, Petitioner related that before the purchase of the American Champion took place, that ownership of the Cessna was transferred from to Petitioner. The FAA registration report confirmed that Petitioner purchased the American Champion on December 20, 2021, and showed Petitioner registered the American Champion on May 7, 2022 with the FAA. The FAA report also shows that sold the Cessna directly to

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

Purchases of tangible personal property in Idaho are subject to tax unless an exemption applies, *See* Idaho Code section 63-3621 Imposition and Rate of The Use Tax. With regards to exemption and resale certificates, Idaho Code section 63-3622(a) provides the following, in part:

To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall

have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption certificate or resale certificate, in which case the purchaser shall bear the burden of establishing the facts giving rise to the exemption.

When Petitioner purchased the American Champion, they traded in the Cessna as consideration. Petitioner claimed during the review process that the Cessna was transferred to Petitioner so they could use it as trade-in on the purchase of the American Champion. However, FAA registration shows this transfer never occurred and that [redacted] sold the aircraft directly to [redacted]

[redacted] This means there were two separate and distinct transactions by Petitioner and [redacted] to [redacted] Therefore, the sale of the Cessna direct from [redacted] to [redacted] means that the Cessna cannot also be used as a trade in by Petitioner.

Idaho Code section 63-3613(b)(2) allows a reduction in the sales price for merchandise accepted in payment of other merchandise. [redacted] must receive the merchandise as payment for the new merchandise. Idaho Sales and Use Tax Rule 44 (IDAPA 35.01.02.044) explains how to qualify for the trade-in allowance:

**044. TRADE-INS, TRADE-DOWNS, AND BARTER (RULE 044).**

Sections 63-3612, 63-3613, 63-3621, Idaho Code

01. Trade-In. A trade-in is the amount allowed by a retailer on merchandise accepted as payment for other merchandise. Merchandise is tangible personal property which is, or becomes, part of an inventory held for resale. (3-31-22)

02. Trade-In Allowance. When a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in. To qualify for the trade-in allowance, the property traded in meets all of the following criteria: (3-31-22)

a. The property is consideration delivered by the buyer to the seller; (3-31-22)

b. The sales documents, executed not later than the time of sale, identify both the property being purchased and the property being traded in; and (3-31-22)

c. The delivery of the trade-in and the purchase are components of a single transaction. (3-31-22)

Rule 44 shows that to qualify for a trade-in, the delivery of the trade-in and the purchase of the new aircraft are components of a single transaction. Petitioner and \_\_\_\_\_ are separate legal entities, created as asset holding companies, and owned by common ownership by \_\_\_\_\_

However, just because \_\_\_\_\_ has common ownership over the two holding companies, does not automatically mean that the trade-in applies to Petitioner. In order for the trade-in to be valid, Petitioner would have had to have owned the Cessna. The facts do not show that Petitioner ever owned the Cessna to trade in.

Because the information received from Petitioner and the FAA registration documents do not support Petitioner's argument of the trade-in consisting of a single transaction, the Tax Commission cannot find that a trade-in occurred.

### **Conclusion**

The owner of Petitioner, \_\_\_\_\_ and \_\_\_\_\_ created these business entities as separate legal entities for financial purposes. As such, each related entities' assets are their own and cannot be swapped arbitrarily between the different entities without proper financial consideration and/or documentation. Petitioner claimed they traded in the Cessna, when it was \_\_\_\_\_ who sold the Cessna to \_\_\_\_\_ per the FAA records.

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." See *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 Tax Commission will uphold the Notice.

Absent information to the contrary, the Tax Commission finds the Notice issued by the Bureau to be a reasonable representation of Petitioner's sales and use tax liability for the period December 1, 2021, through December 31, 2021.

The Bureau added penalty and interest to the sales tax deficiency and Petitioner made a pre-payment of \$600 on September 12, 2022. The Tax Commission reviewed the additions and found them to be applicable per Idaho Code sections 63-3045 and 63-3046. The partial payment of \$600 was applied in accordance with IDAPA 35.02.01.140. The partial payment covered interest due at time of payment and reduced tax due by \$250. Interest will continue to accrue on the adjusted amount due from September 13, 2022 at the rate set forth in Idaho Code section 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated March 1, 2023, 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>
\$16,200	\$796	\$1,488	\$17,884

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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