BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

)

In the Matter of the Protest of

Petitioner.

DOCKET NOS. 0-958-104-576 & 1-492-026-368

DECISION

(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).¹ 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

¹ 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. 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 it's 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. 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. 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

on industry standards for rental of similar helicopters that include a pilot and involve related-party entities, ie, Petitioner and

On May 25, 2021, Petitioner provided a copy of one lease agreement for the Helicopter between Petitioner and This lease agreement was dated May 20, 2018, but signed on May 20, 2021, and covered the term of May 20, 2018 through May 20, 2023. This written lease agreement stated the rental rate for the Helicopter was at a rate of \$250 per hour as a Part 91 rental.

The Bureau issued a Notice on June 22, 2022, after reviewing the information and documentation Petitioner provided. Petitioner appealed the Notice to obtain additional time to gather documentation. The Bureau acknowledged the protest and maintained possession of the file while Petitioner tried to gather additional documentation.

The Bureau sent the file to the Tax Commission's Appeals Unit (Appeals) for administrative review after several months passed with no further documentation provided by Petitioner. Appeals sent Petitioner a letter outlining the options for redetermining a protested Notice. Petitioner responded, asking to work through the issues of the case. Petitioner mentioned in its protest that it did not agree with the Bureau's use of a fair market rental value of \$525 to calculate the sales tax deficiency for related entity sales as opposed to the \$250 used by Petitioner. Petitioner does not believe the rate of \$525 is correct and that the rate of \$250 should be used for the related entity leases.

On May 30, 2023, Petitioner participated in an informal hearing represented by Mr. Mr. reiterated the Helicopter is registered with the FAA as a Part 91 Helicopter. Mr. also explained that his representative was unaware of what information the Tax Commission 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. was the pilot for most of the leases. Of the 174 flight log entries, Mr. 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.

operated the Helicopter. Confusing the issue more is the fact Mr. is the sole owner of Petitioner and the related entities that leased the Helicopter. Regardless, if Mr. 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

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 document format and did not come from any point-of-sale system which makes their reliability questionable without financial statements available in which to verify the invoices. Also, the invoices did not include the dates or duration of use for each individual rental of the Helicopter in which to verify which flight they referred to during the Audit Period.

Because the documentation that Petitioner provided could not be verified and overall leads to more questions that could not be answered, Petitioner did not meet its burden to show that the Bureau's determination was incorrect. While Petitioner disagreed with the Bureau's use of a "Reasonable Rental Value" in determining use tax due, this documentation supplied supported the Bureau's findings and conclusions.

Conclusion

The Tax Commission hereby upholds the Notices. Petitioner did make a payment of sales tax in the amount of \$2,081.40 that can be tied directly to an invoice provided by Petitioner for the lease of the Helicopter to This amount will be used as an audit payment and applied in accordance with IDAPA 35.02.01.140 "Application of Partial Payments."

The Bureau added penalty and interest to the sales and use tax deficiency. The Tax Commission reviewed the additions, found them to be right per Idaho Code sections 63-3045 and 63-3046. Interest will continue to accrue at the rate set forth in Idaho Code section 63-3045(6) until paid.

THEREFORE, the Notices of Deficiency Determination issued against Petitioner for the Audit Period, are hereby APPROVED, in accordance with the provisions of this decision, and are AFFIRMED and MADE FINAL.

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

	<u>TAX</u> \$6,414	<u>PENALTY</u> \$1,602	<u>INTEREST</u> \$667	<u>TOTAL</u> \$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.