

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-494-975-488
)	
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 and use tax, penalty, and interest for the audit period April 1, 2015, through December 31, 2017 (Audit Period), totaling \$35,700.

The Tax Commission hereby issues its decision upholding the Notice for the reasons detailed below.

Background and Audit Findings

Petitioner is a corporate entity, that is disregarded for income tax purposes, with a sole owner, The parent company that owned Petitioner during the Audit Period is

and was also owned by

Petitioner owned and operated a 2015 Robinson Helicopter Model R66, tail number and serial number (Helicopter) registered under Part 91 of the Federal Aviation Administration (FAA). Petitioner rented and leased the Helicopter to customers and other entities that are owned by Mr. during the Audit Period. Regarding some of Petitioner’s Helicopter lease arrangements, Petitioner received payment in exchange for making the Helicopter available for priority use to that specific payee above all others; which Petitioner referred to as a “right of first refusal agreement”. Petitioner related that the lease agreements for the Helicopter during the Audit Period were oral agreements, as were the agreements for right of first refusal. Petitioner

did not file sales tax returns during the Audit Period nor did Petitioner's parent company. In place of filing sales tax returns, Petitioner stated it accounted for sales tax by reporting Petitioner's rental income on the parent company, _____' income tax return.

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 requested flight logs, invoices for hangar rentals for the Helicopter, any lease agreements for the Helicopter, any written agreement concerning the Helicopter, documentation of lease payments received by Petitioner for the Helicopter, and for evidence of sales or use tax paid on the Helicopter. Petitioner did not provide a majority of the information requested by the Bureau. Rather, it provided a total of four invoices and snippets of statements of operations for the Helicopter for the years 2015, 2016, and 2017. Ultimately, Petitioner told the Bureau to refer to _____ income tax return for its posting of sales tax.

The Bureau's initial request for documentation was for the period February 1, 2019, through March 31, 2021. However, the Bureau later adjusted the beginning of the audit period to January 1, 2015, after receiving and reviewing information received from the FAA that showed Petitioner purchased the Helicopter in September of 2015.

The Bureau issued a Notice on May 12, 2022, after reviewing all information and documentation provided by Petitioner. Petitioner appealed the Notice stating that it needed additional time to gather documentation and resolve some of the issues identified in the Notice. The Bureau acknowledged the protest and maintained possession of the file to allow additional time for Petitioner to obtain requested information. The Bureau sent the file to the Tax Commission's Appeals Unit (Appeals) for administrative review once it was determined the Bureau would not receive any further documentation.

Appeals sent Petitioner a letter outlining the options for redetermining a protested Notice. Petitioner responded, asking to work through the issues of the case with the Appeals specialist without having an informal hearing. Overall, Petitioner protested three issues concerning the Notice: 1. the taxation of right of first refusal payments; 2. whether the parent company's income tax returns could be used to report and calculate sales tax; and 3. the statute of limitations for sales and use tax review of the Audit Period.

On May 30, 2023, Petitioner participated in an informal hearing. At the hearing, Mr. [redacted] as Petitioner's representative, explained that the Helicopter was only used for rental purposes. As a result of the hearing, Mr. [redacted] asked for the Tax Commission to present a list to him of additional documentation that was needed for the Tax Commission to render a decision in this matter. After the hearing was over, the Appeals Specialist sent Petitioner a detailed records request. However, ultimately, Petitioner did not provide any additional documentation.

The Tax Commission, having reviewed all information available and presented by Petitioner, hereby issues its decision.

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). Petitioner was unable to show the Notice issued by the Bureau to be incorrect and did not provide information for the Tax Commission to make a determination that the Notice should not be upheld. Therefore, the Tax Commission upholds the Notice and amount of sales and use tax determination issued by the Bureau.

A. Petitioner Did Not Provide Adequate Documentation To Show That The Bureau's Determination Was Incorrect.

Throughout the duration of the audit and appeal, Petitioner supplied very little documentation for the Tax Commission's consideration. Petitioner did provide four invoices and snippets of statements of operations for the Helicopter for the years 2015, 2016, and 2017. Petitioner did not have any written agreements to produce concerning the Helicopter. Further, relating to its oral leases, Petitioner did not provide an explanation of terms or conditions concerning their lease agreements, including price terms. Therefore, overall, this made it difficult to verify whether any amount of sales tax that was purportedly reported on the parent company's income tax return was correct. Petitioner stated that _____ income tax returns were used as its means to report sales tax to the Tax Commission. Petitioner did not file any sales tax returns for the Audit Period. Also, no documentation was presented to show sales or use tax was paid or that an exemption applies.

Overall, the documentation Petitioner provided resulted in further questions which the Tax Commission sought verification for. Idaho Code section 63-3624(c) details a taxpayers' requirement for records retention in Idaho and specifically 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.

Based on the information provided, the Tax Commission could not verify many of Petitioner's claims.

For example, after supplying the four invoices to the Bureau, Petitioner made claims about the type of sale that occurred which contradicted the information contained on the invoices. Petitioner asserted that the bulk of the charges on the invoices are for "right of first refusal payments" for the Helicopter, which were not taxable in Petitioner's opinion. However, the invoice provided from 2015 does not show "right of first refusal" fees. Collectively, the invoice description for three of the invoices is, "Business Use Flight Time" and "Business Use Flight Time Month". All invoices have the term "Use" in the description, therefore indicating that the charges were for use of the Helicopter. Charges for use of the Helicopter are taxable. Thus, since the documentation provided reflected taxable charges, the Tax Commission held these charges as taxable.

B. Petitioner's Failure To File Sales Tax Returns Caused The Tax Commission To Determine The Amount Of Sales and Use Tax Owed Based On The Information And Documentation Made Available by Petitioner.

Petitioner did not file sales tax returns for the Audit Period, nor did it have a sales tax permit. It was only through the audit and inquiry to Petitioner did the Bureau find out that Petitioner was making taxable sales by renting the Helicopter out to third parties. Overall, during the audit, the Bureau determined the amount of sales and use tax based on the information it could find and documentation made available by Petitioner.

Petitioner's financial records were requested several times during the audit and the administrative review process for the Tax Commission to be able to calculate Petitioner's sales and use tax liability. However, the Tax Commission did not receive the financial records requested. Further, the Bureau was unable to obtain a sales journal or general ledger from Petitioner. The documents Petitioner did provide showed an intermingling of sales transactions and assets. Three of the four invoices provided had headings for the parent company, and not Petitioner.

For the Audit Period, Petitioner claimed that it reported sales and use tax on its parent company, income tax returns. When filed its income tax returns relevant to the years covered by the Audit Period, it filed a form 41S and reported an amount under line 53, which was meant to be its sales and use tax reporting for those years. However, Line 53 is meant to allow reporting of use tax on an out of state purchase that an entity or person did not previously pay sales tax on, not to report someone's sales that they made themselves. Further, in order to properly make sales in Idaho, Petitioner would need to have a sales tax permit which Petitioner did not have. Overall, reporting sales on an income tax form is not a proper means to report sales tax.

Petitioner was given ample opportunity to provide the financial records needed to delineate sales that occurred by Petitioner. However, Petitioner did not provide sufficient information to show that the Bureau's finding was incorrect. Although Petitioner did have the totals listed on income tax returns, the Bureau did not have information to verify whether these totals were correct. Therefore, the Bureau used the information available, which included the four invoices and snippets of statements of operations for the Helicopter for the years 2015, 2016, and 2017, and the total amount that Petitioner reported on its parent

company's income tax returns, to determine Petitioner's total taxable sales and use tax due. Although Petitioner disputes the total that the Bureau determined, Petitioner did not provide any documentation to show that the Bureau was incorrect.

C. The Bureau's Determination Was Made Within The Statute of Limitations Established By Idaho Law.

The Bureau was within the proper statute of limitations to make its determination of sales and use tax owed because Petitioner did not ever file sales and use tax returns as the Idaho Code and Statutes prescribe. Idaho Code section 63-3623 sets forth that a sales and use tax return should be filed by every seller and sets forth the requirements to properly report sales tax during a reporting period. Idaho Code section 63-3633(c) sets the statute of limitations on the assessment of sales or use tax for persons who have not filed a return and specifically states:

(c) In the case of taxes owed by a person who has failed to file a return as provided in section 63-3623, Idaho Code, the amount of taxes imposed in this chapter shall be assessed within seven (7) years of the time the return upon which the tax asserted to be due should have been filed.

Petitioner purchased the Helicopter in September 2015 and then rented the Helicopter during the Audit Period but did not file a sales and use tax return as required by Idaho Code section 63-3623. The statute of limitations for persons who fail to file a return is 7 years. The Bureau issued the Notice on May 12, 2022, well within the 7-year statute of limitations. All items held taxable in the review fall within the scope of Idaho Code section 63-3633(c).

Conclusion

Petitioner disputes the amounts held taxable by the Bureau but failed to provide documentation to refute the Bureau's findings. The documentation that was provided was insufficient as Petitioner's explanations could not be verified. Overall Petitioner did not provide

an adequate explanation or details for the oral leases and agreements that were in place regarding the Helicopter.

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 Notice of Deficiency Determination dated October 20, 2022, 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>
\$23,989	\$5,998	\$7,515	\$37,502

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.
