

## In the Matter of the Protest of

Petitioner.

## DECISION

Appeals unit for administrative review as Petitioner maintained their objection to the proposed amount of sales tax due.

Appeals reviewed the case and sent Petitioner a letter informing them of the options for redetermining the Notice. Petitioner requested an informal hearing which was held on August 6, 2024.

Petitioner's main focus during the informal hearing was on the membership fees and the refunds of membership fees to those who chose to leave the [REDACTED] club. Petitioner argued the membership fees were not taxable as they represented equity in the [REDACTED] club. Petitioner also asserted that the tax assessed on the rental of [REDACTED] should be reduced by the cost of fuel used in [REDACTED] [REDACTED] arguing that the fuel is exempt as tax was paid by the distributor.

### **LAW AND ANALYSIS**

Petitioner raises three issues in its appeal of the Notice. First, Petitioner asserts that the sale of memberships is not subject to the sales tax. Second, Petitioner asserts that if the sale of memberships is subject to sales tax, then it should receive a credit for refunds of membership fees. Third, Petitioner asserts that the amounts it paid for fuel for [REDACTED] [REDACTED] should be deducted from the rental price before calculating the taxes due.

First, the sale or the use of or the privilege of using tangible personal property for recreation is subject to the sales tax. Idaho Code 63-3612. Petitioner charges each member \$11,000.00 for their membership, which gives them the privilege of using [REDACTED] [REDACTED] [REDACTED] Petitioner refers to Rule 38 and asserts that because it charges a fair rental rate for the use of [REDACTED] [REDACTED] the membership charges are unrelated to the rental of [REDACTED] [REDACTED] and therefore only the rental charges are taxable. But becoming a member by payment of the membership fee is required before a person can rent [REDACTED] [REDACTED] The Idaho Supreme Court has previously rejected substantially the same argument Petitioner makes here. See, *Crane Creek Country Club v. Idaho State Tax Commission* (122 Idaho 880 (1992)).

Thus, the membership fees Petitioner charges are a sale of the privilege of renting [REDACTED] within the meaning of Idaho Code 63-3612(f) and tax is due whether the member actually uses [REDACTED] or not.

Second, there are no refunds of membership fees to support Petitioner's claim to a credit for refunds. Under the plain terms of Petitioner's Bylaws members purchase a transferable membership that is subject to Petitioner's first right to purchase the membership if the member chooses to sell it.

The Bylaws of Petitioner in Article I, section 7 state:

**Section 7. Sale of Membership.** If at any time a Club member decides to sell his or her membership, he may do so by selling it to the Club at "par value" or to an individual approved by the Club at "par value". Individuals desiring to purchase a membership from a current Club member must meet the membership requirements set forth in Section 5 of this Article I and be approved as a new member pursuant to Section 6 of this Article 1. The Club shall have right of first refusal for purchase of any membership offered for sale, and shall make every effort to accommodate any prospective members who may be on a waiting list, in chronological order.

Under the plain terms of the Bylaws what Petitioner is calling refunds are actually new sales of the memberships. Each sale of a membership is subject to the sales tax unless an exemption applies. Petitioner does not show that any exemption applies to the sales that it has termed "refunds".

Third, the amounts Petitioner paid for fuel for [REDACTED] are not separately tracked and billed to the member renting [REDACTED] and cannot be deducted from the rental price before calculating the taxes due. While there is an exemption for Fuel pursuant to Rule 037 and the fuel is an expense to Petitioner it does not track the fuel a member uses, and it does not separately bill for the fuel used. Instead, Petitioner rents [REDACTED] with fuel to its members on an hourly basis. Members pay the hourly rate to use [REDACTED] and there is no separate charge for fuel. Because Petitioner generally only bills members for the use of [REDACTED] and does not separately track and bill for fuel used by the member the entire rental amount is taxable.

## CONCLUSION

Petitioner was unable to show the Notice issued by the Bureau is incorrect. The membership fees sold by Petitioner grant members the ability to rent [REDACTED] and are subject to the sales and use tax. Those memberships are transferable and any transfers of those memberships by the member to Petitioner for resale to another person are sales, not refunds, under the clear terms of Petitioner's Bylaws. Such sales of the right to use [REDACTED] are subject to the sales and use tax. Petitioner does not separately track and charge for the fuel used by members who rent [REDACTED] so any fuel costs cannot be deducted from the rental charges. Therefore, the Tax Commission upholds the Notice issued by the Bureau for the period January 1, 2020, through December 31, 2022.

The Bureau added penalty and interest to the sales and use tax deficiency. The Tax Commission reviewed the additions and found them appropriate per Idaho Code sections 63-3045 and 63-3046. Interest has been updated accordingly.

THEREFORE, the Modified Notice of Deficiency Determination, 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>
\$23,489	\$1,175	\$2,510	\$27,174

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 \_\_\_\_\_ 2025.

IDAHO STATE TAX COMMISSION

## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2025,  
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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