

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 1-759-101-952
	)	
Petitioner.	)	DECISION
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The Income Tax Audit Bureau (Bureau) issued (Petitioner) a Notice of Deficiency Determination (Notice) for tax year 2021. Petitioner protested and provided documentation and explanations for why the adjustments were incorrect. The Tax Commission reviewed the matter and hereby modifies the Notice issued by the Bureau.

**BACKGROUND**

Petitioner is an Idaho S-Corporation apportioned 100% to Idaho filing on a calendar year basis. They conduct sales in the home and auto insurance industry. The Bureau conducted a review of Petitioner’s 2021 return by requesting documentation to substantiate business deductions for a storage shed and 2022 Polaris UTV (UTV). Documentation requested included invoices, photos, locations of the assets, business purpose of the assets, and depreciation schedules. Petitioner responded, providing photos of the shed and UTV with invoices and an explanation of their business purpose.

Petitioner explained the UTV was purchased for snow removal around the business property, including the parking lot and driveway. In addition, the UTV is used for driveway upkeep, yard work and general property maintenance. Petitioner continued to explain that the UTV was also used to run errands around town and to do local property inspections. The storage shed was used to store the UTV and other lawn care equipment, old furniture, and general storage for the insurance business. The Bureau reviewed the information provided and issued a Notice disallowing the depreciation claimed

for the storage shed and UTV and removing the Idaho Investment Tax Credit (ITC) claimed on the UTV. Petitioner protested, providing a more comprehensive explanation for why the items should qualify. The Bureau acknowledged their protest and transferred the case to the Tax Commission's Appeals Unit (Appeals).

Petitioner participated in an informal hearing telephonically along with their representatives. Petitioner emphasized what was already said in previous correspondence, but answered questions presented by Appeals. The informal hearing was completed, and the Tax Commission thoroughly reviewed the material presented. Based on the information available, the Tax Commission makes the following decision:

#### **LAW AND ANALYSIS**

Internal Revenue Code (IRC) section 162(a) allows deductions for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. "Ordinary and necessary" has been described in relevant case law as appropriate, helpful, normal, usual, and customary in their field of business. *Welch v. Helvering*, 290 U.S. 111. Petitioner correctly argued that the deductibility of the storage shed and UTV should also be analyzed through IRC section 263, "Capital Expenditures." Under this code section, the expense must be property you own, used in your business or income-producing activity, have a determinable useful life, and expected to last more than one year. The main analysis for the purchased items is whether they were ordinary and necessary and used in Petitioner's business.

#### UTV:

Petitioners purchased a 2022 Polaris \_\_\_\_\_ in 2021 for a total price of \$31,000 including tax, documentation fees, title, and freight. Advertisements of this vehicle tout a range of features such as premium HVAC heat and air conditioning, 2,500-pound towing and 1,500-

pound payload capacity, LED headlights, 4,500-pound winch, and six-person seating capacity. The advertisement photos of this UTV show the possible uses of the vehicle, including hunting and farm work. It is clear the advertising for the UTV is for recreational use, including hunting and off-road exploration. However, many uses for farming purposes have been described, especially when large amounts of acreage are involved.

Petitioner is an insurance broker, selling home and auto insurance out of a small office in Idaho. Petitioner argues the business use of the UTV is snow removal, property maintenance, and visiting rural clients to assess property damage. No documentation has been provided to substantiate these claims, such as mileage logs or photos showing work being done. Additionally, Petitioner is not a licensed insurance adjustor, meaning assessing damages for clients is not typical. Furthermore, the claim that the only way to visit some of Petitioner's rural clients is via UTV does not appear to be reasonable. A truck, which Petitioner also depreciates as a capital expenditure, is just as efficient. Regarding snow removal, Petitioner admits no snow removal has been done since purchasing the UTV, as the plow has been on "back order." As of the date of this decision, the snowplow has yet to be purchased.

It is reasonable and customary for business owners to maintain their property for potential visiting clients. This includes lawn care, snow removal, when necessary, tree trimming, etc. Usually, this work is done by hired professionals and expensed as "repairs and maintenance" on their tax returns. The question at hand is if it is reasonable and customary for Petitioner, an insurance broker, to purchase a \$31,000 UTV to perform their own property maintenance. The Tax Commission has considered all the information at hand and has concluded it is not reasonable or customary.

As a secondary point, documentation needed to substantiate listed property as 100% business use is extensive and strict per IRS guidelines.

Treasury Regulation 1.280F-6 defines “listed property” as:

- (i) Any passenger automobile.
- (ii) Any other property used as a means of transportation,
- (iii) Any property of a type generally used for purposes of entertainment, recreation, or amusement, and
- (iv) Any computer or peripheral equipment.

Under these guidelines, UTVs are considered both passenger automobiles and property used for recreation. Therefore, Petitioner must keep adequate records by maintaining an account book, diary, log, or similar record to substantiate business use of the asset. It is the Tax Commission’s understanding that no such documentation exists.

The burden of proof is on Petitioner to substantiate the business purpose of the UTV. The Tax Commission finds that Petitioner has not met their burden of proof. The Tax Commission therefore upholds the Bureau’s adjustment finding the UTV not an ordinary and necessary expense for Petitioner’s business.

Idaho Investment Tax Credit (ITC):

Idaho Code section 63-3029B defines a qualifying investment for purposes of the ITC as property defined in the IRC of 1986, as in effect prior to November 5, 1990, sections 46(c) and 48. IRC section 48 stated that a qualifying investment is property subject to depreciation. Property subject to depreciation is property used in a trade or business. The Bureau disallowed Petitioner’s ITC claimed on the Polaris UTV. The reason for the disallowance is the conclusion the UTV was not an ordinary and necessary expense. The Tax Commission affirms the Bureau’s analysis, and therefore upholds the adjustment removing ITC claimed on Petitioner’s return.

Storage Shed:

The Bureau disallowed the section 179 depreciation on their storage shed, citing the main purpose of the shed was to store the UTV and therefore not ordinary or necessary. During the informal

hearing, Petitioner expressed the storage shed was used not only to store the UTV, but also as general business storage. Different items would be stored in the shed depending on several circumstances. One example Petitioner gave was when they were getting new furniture for the office, the old furniture was stored in the shed for some time. The office is small with limited space for storage, so a detached portable garage appeared to be the best fit for the business. The Tax Commission has reviewed the facts at hand and finds the arguments presented by Petitioner to be convincing and reasonable. Storage is generally ordinary and necessary for almost any business, including insurance brokers. Therefore, The Tax Commission hereby modifies the Notice to allow for section 179 depreciation of the storage shed.

### **CONCLUSION**

The Bureau adjusted Petitioner's 2021 return to remove deductions and credits for the purchase of a UTV and storage shed. The Bureau asserted that the purchases were not ordinary or necessary for the business. The Tax Commission has reviewed the relevant material and oral testimony, and hereby affirms the decision by the Bureau to remove the deductions and credits for the UTV but allow for the section 179 deduction for the storage shed.

THEREFORE, the Notice of Deficiency Determination dated January 20, 2023, and directed to \_\_\_\_\_ is hereby MODIFIED.

Since Petitioner is a flow-through entity, the additional tax owed flowed through to its shareholders. Therefore, no demand or order for payment is necessary.

An explanation of Petitioner's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2023,  
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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