

STATE OF WISCONSIN  
TAX APPEALS COMMISSION



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CITATION PARTNERS, LLC,

DOCKET NO. 18-S-192

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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**RULING AND ORDER**

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**LORNA HEMP BOLL, COMMISSIONER:**

This case comes before the Commission for decision on simultaneous Motions for Summary Judgment. The Petitioner, Citation Partners, LLC, Beaver Dam, Wisconsin, appears by Attorneys Frederic J. Brouner and Megan A. Senatori, of DeWitt, LLP<sup>1</sup>. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Mark S. Zimmer.<sup>2</sup> The parties have filed a Stipulation of Facts; both have filed briefs, and Petitioner has filed an affidavit in support of its position. For the reasons stated below, we find for the Department.

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<sup>1</sup> Attorney Richard W. Pitzner also initially represented the Petitioner.

<sup>2</sup> Attorney Julie A. Zimmer initially represented the Department.

## FACTS

### *Material Facts*

1. Petitioner, Citation Partners, LLC, is a limited liability company based in Beaver Dam, Wisconsin. (Petition.)

2. The Petitioner/Lessor owns a Cessna Citation aircraft (the "Aircraft") which it leases to Lessees pursuant to an Aircraft Dry Lease ("Dry Lease"). The Dry Lease (Petition, Ex. C), does not include the financial terms of the lease. Those terms are included in what is called a Side Agreement. (Stip. ¶ 1.)<sup>3</sup>

3. Each Lessee executes a Side Agreement each calendar year in the forms set forth in the Petition, Exhibit D (dated January 1, 2014, and January 1, 2015). The Side Agreement governs billings to Lessees for an allocable share of flight time and the cost of Aircraft maintenance and the cost of engine maintenance and parts. (Stip. ¶ 1.)

4. Identical Dry Leases and Side Agreements are signed by each Lessee of the Aircraft.<sup>4</sup> (Stip. ¶ 2.)

5. This case involves two forms of Side Agreements, one dated January 1, 2014, before the July 2014 enactment of Act 185, and one dated January 1, 2015, after the enactment of Act 185. (Petition, Ex. D.)

6. The January 1, 2014 Side Agreement, under "Hourly Fee," lists a flight hour charge and an additional separately identified engine maintenance charge of \$286.42 per flight hour, described as "Tap Elite Engine Maintenance Program Hourly Rate." The

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<sup>3</sup> Most of the factual information is set forth in present tense although the years at issue are 2014 and 2015.

<sup>4</sup> Some agreements differed in the hourly amount charged, but that difference is not pertinent to the issues addressed in this decision.

TAP Elite Engine maintenance hourly rate is the exact hourly rate for engine maintenance billed to Petitioner by Williams International for maintenance of the Aircraft engines. (Stip. ¶ 3.)

7. Act 185 became effective July 1, 2014.

8. When Petitioner became aware of the passage of Act 185 in the late fall of 2014, Petitioner changed its invoicing to separately identify "Airplane Repairs" (previously included in the flight hour charge) so that both "Airplane Repairs" and "Engine TAP Costs" were identified in its invoices to its Lessees on and after November 1, 2014, to December 31, 2015. (Stip. ¶ 3; Petition, Ex. D-1, pp. 2-4.)

9. While the Aircraft maintenance cost per flight hour was not broken out in the Side Agreement until the January 1, 2015 Side Agreement, on and after January 1, 2015, the Side Agreements and invoices to Lessees expressly provided for dollar for dollar reimbursement by each of the Lessees of the Aircraft of both engine maintenance cost and Aircraft maintenance cost. (Stip. ¶3.)

10. Petitioner revised Side Agreement as of January 1, 2015, to break out the amount to be billed as the Aircraft maintenance hourly rate at \$488 per flight hour (Stip. ¶ 3; Petition, Exs. D and D-1.)

11. Petitioner determined a separate per flight hour charge for (a) engine maintenance ("TAP") and for (b) Aircraft maintenance parts and services ("airplane repairs") to obtain a dollar for dollar "reimbursement"<sup>5</sup> to Petitioner for actual engine

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<sup>5</sup> As will be discussed below, the Lessee does not "reimburse" the Lessor. The lease price consists of, among other things, a share of Lessor's Aircraft maintenance and repair expenses attributed to each Lessee as a function of the flight hours each Lessee uses the Aircraft. These hourly fees are broken out on the invoice.

maintenance and estimated Aircraft maintenance cost for purposes of claiming the Act 185 exemption. (Stip. ¶ 3.)

12. The Dry Lease and the related Side Agreements for 2014 and 2015 (Petition, Exs. C and D) signed between the Petitioner and its Lessees are not maintenance or service contracts providing for future performance or payment for repair services but, instead, obligate the Lessee to “reimburse” the Petitioner for costs of engine maintenance and parts and Aircraft maintenance previously paid by the Petitioner.<sup>6</sup> (Stip. ¶ 5.)

13. The governing Dry Lease provides that the Aircraft is to be maintained by certified and qualified mechanics. (Stip. ¶ 6.)

14. The Dry Lease requires the Lessee to be in exclusive operational control of the Aircraft at all times as required by 14 C.F.R. 1.1 imposed by the FAA. (Stip. ¶ 6.)

15. The Dry Lease further requires the Lessee to inspect the Aircraft and maintenance records pertaining to the Aircraft to confirm the air worthiness of the Aircraft prior to each flight and expressly prohibits the Lessee from operating the Aircraft unless and until such time as certificated and qualified mechanics have completed any required repairs and maintenance. (Stip. ¶ 6.)

16. The Dry Lease requires the Lessor (the Petitioner) to schedule and pay for all repairs and maintenance on the Aircraft and then states that the Lessor (the Petitioner) will bill the Lessee for its proportionate share of such maintenance and repair

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<sup>6</sup> As with Paragraph 10 of the parties’ Stipulation begins, “The lessee then reimburses the lessor for each lessee’s pro rata share . . . .” See also Stipulation paragraphs 3, 5, 11, 12, and 13. As the previous footnote noted and the analysis will explain, “reimbursement” is an erroneous characterization.

costs. Each Lessee executes the same Dry Lease which, in turn, must be filed with and accepted by the FAA and must be kept on board the Aircraft during use by the Lessee. (Stip. ¶ 6.)

17. Engine Maintenance: The Aircraft engines are physically removed from the Aircraft and shipped to the State of Michigan for maintenance by Williams International. Williams International billed the Petitioner \$286.42 per flight hour in 2014 and \$292.26 per flight hour in 2015 for the engine maintenance, and then that exact hourly cost is, in turn, billed by the Petitioner to all of the Lessees based on their respective use of the Aircraft as measured by flight hours. (Stip. ¶ 7.)

18. Aircraft Maintenance/Repairs: Unlike the engine maintenance done by Williams International in the State of Michigan, the actual Aircraft maintenance was performed in the State of Wisconsin and was itemized in the invoices from the Petitioner to Lessees at a rate of \$475 per flight hour on and after November 1, 2014, and \$488 per flight hour in 2015 as a reasonable estimate made by the Petitioner based on its prior actual costs for such Aircraft maintenance. (Stip. ¶ 8.)

19. The Petitioner insists there be one maintenance shop (Cessna for the Aircraft and Williams International for the engines) in order to know the engine and the Aircraft maintenance will be done properly and in compliance with FAA rules. The Lessor does not want, and cannot allow, Lessees to take the Aircraft or the engines to any other maintenance or engine repair shop and risk air worthiness of the Aircraft. (Stip. ¶ 9.)

20. The Dry Lease mandates the specific maintenance procedure and expressly provides that Lessor (the Petitioner) will control the maintenance. The portion of the total fees charged to each Lessee represents that Lessee's pro rata share of Lessor's Aircraft maintenance cost and engine maintenance and parts cost based on defined hourly rates set forth in the Side Agreement and the Lessor's billings to the Lessees. (Stip. ¶ 10.)

21. Prior to November 1, 2014, Petitioner collected sales tax on the entire price of the lease of its aircraft. (Stip. ¶ 11.)

22. Starting November 1, 2014, because of the Act 185 exemption, Petitioner no longer collected sales tax from the Lessees on the portion of their lease payments that was attributable to the Aircraft maintenance and engine maintenance costs and parts. Also beginning November 1, 2014, Petitioner implemented the invoicing procedure discussed paragraph 8, et. seq., above. (Stip. ¶ 11.)

23. Petitioner applied to the Department for a refund of sales tax for the period July 1, 2014, to October 31, 2014, to recover sales tax previously paid to Respondent and previously collected from Lessees for Aircraft maintenance and engine maintenance cost. The Department issued a refund for the months of July through October 2014. (Petition, Ex. D-2.) Petitioner then issued credit memos to all Lessees for previously collected sales tax to reflect the four-month refund from the Department. (Stip. ¶ 11.)

24. Following a field audit, the Department assessed sales tax on the portion of Petitioner's lease receipts from Lessees attributable to their pro rata shares of Aircraft maintenance and engine maintenance and parts costs on which Petitioner had not

remitted tax during the periods November 1, 2014, through December 31, 2015. The assessment also sought to recover the amounts previously refunded for the months of July through October 2014.<sup>7</sup> (Stip. ¶ 12.)

### *Procedural History*

25. After a field audit of the Petitioner, the Department issued a Notice of Amount Due dated November 20, 2017, assessing sales/ use tax due for the tax years ending December 31, 2012, through December 31, 2015, in the amount of \$47,501.13, inclusive of interest through January 19, 2018. (Stip. ¶ 14, Ex. B.) Several related issues have been resolved, so that the period at issue is July 1, 2014 – December 31, 2015.

26. On or about December 20, 2017, Petitioner petitioned for a timely redetermination of the November 20, 2017 determination. (Stip. ¶ 15, Ex. C.)

27. In a notice dated July 27, 2018, the Department denied the Petition for Redetermination. (Stip. ¶ 16, Ex. D.)

28. On September 7, 2018, Petitioner filed a timely Petition for Review with the Commission. (Stip. ¶ 17; Commission file.)

29. Exhibit A to the parties' Stipulation is the revised sales tax assessment, which assesses sales tax on the portion of the lease payments representing amounts paid by the Petitioner for aircraft maintenance and engine maintenance and parts costs.<sup>8</sup> The Petitioner claims these amounts are exempt from tax under Act 185

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<sup>7</sup> The audit resulted in additional assessed amounts unrelated to this decision; those issues have been resolved.

<sup>8</sup> A small amount of use tax is also included, which the Petitioner concedes.

when separately invoiced to its Lessees; however, the Department has determined that this portion of the lease payments is not exempt from sales tax. (Stip. ¶ 13.)

#### APPLICABLE LAW

In Wisconsin, the lease of tangible personal property is taxable. Sales tax applies to the sales price of a lease unless an exception in subchapter 77.52 applies.

**Wis. Stat. § 77.52** Imposition of retail sales tax.

(1)(a) For the privilege of selling, licensing, leasing or renting tangible personal property at retail a tax is imposed upon all retailers at the rate of 5 percent of the sales price from the sale, license, lease or rental of tangible personal property sold, licensed, leased or rented at retail in this state, as determined under s. 77.522.

(1b) All sales, licenses, leases, or rentals of tangible personal property or items, property, or goods under sub. (1) (b), (c), or (d) at retail in this state are subject to the tax imposed under sub. (1) unless an exemption in this subchapter applies.

(emphasis added)

Wisconsin Statutes define "sales price" as follows:

**Wis. Stat. § 77.51(15b)(a)** "Sales price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d) or services are sold, licensed, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

1. The seller's cost of the property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) sold.
2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, except as provided in par. (b) 3m. and 3s., and any other expense of the seller.

(emphasis added)

Goods sold in Wisconsin are generally taxable under Wis. Stat. § 77.52.

However, pursuant to 2013 Wis. Act 185 (eff. July 1, 2014), sales of aircraft parts are exempt.



**Wis. Stat. § 77.54 General exemptions.** There are exempted from the taxes imposed by this subchapter:

(5) The sales price from the sale of and the storage, use or other consumption of:

(a) 3. Parts used to modify or repair aircraft.

Only specifically designated services are subject to sales tax in Wisconsin.

Maintenance services are included in the list of taxable services. However, the "Act 185 Exemption" specifically excludes the sale of aircraft maintenance services from sales tax.

The statutory section imposing sales on maintenance services now begins as follows:

**Wis. Stat. § 77.52(2)(a)** The tax imposed herein applies to the following types of services:

10. Except for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of any aircraft or aircraft parts . . . .

#### ANALYSIS

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2). Sales tax is imposed on the sale of all goods sold in the state. Sales tax is explicitly imposed on all leases in Wisconsin, per Wis. Stat. § 77.52(1)(a), unless an exemption applies. Wis. Stat. § 77.52(1b). The tax is measured as a percentage of the sales price of, in this case, the Lease.

#### *The Lease Agreements*

Petitioner leases the Aircraft to various Lessees pursuant to a governing contract, called an Aircraft Dry Lease. The Dry Lease sets forth the parties' respective

responsibilities under the Lease. For \$1.00 “and other good and valuable consideration,” the Petitioner, as Lessor, agrees to lease the Aircraft to the Lessee.

The Lessor commits to not default on its related obligations, to pay taxes, and to procure insurance. Of note, the Dry Lease informs the Lessee that Lessee’s proportionate share of the insurance costs and maintenance costs will be included in the Lease Payments. (Dry Lease, Sections Five and Nine.)

The Lessee must provide its own pilots and must provide Lessor with all the pertinent details planned for each rental period. The Dry Lease also places some restrictions on Lessee’s use of the Aircraft as to purpose, locations, operating procedures, and pilot qualifications. (Dry Lease, Section Six.) Additionally, for every flight, Lessee must maintain all logbooks and records in accordance with FAA rules, and Lessor may inspect those records at any reasonable time. (Dry Lease, Sections Seven and Nine.)

This case concerns the maintenance of the Aircraft. Pertinent to that issue, before using the Aircraft, the Lessee is charged with doing its own inspection of the Aircraft and in doing so accepts that the Aircraft is in good condition and repair. (Dry Lease, Sections One and Nine.)

If Lessee determines any repair or maintenance should be completed prior to any flight, Lessee shall notify Lessor and shall not operate the Aircraft until such time as certificated [sic] and qualified mechanics have completed such repairs or maintenance. Lessor shall schedule and pay for all repairs and maintenance on the Aircraft during the term of this Lease, including all ferrying flights and transportation charges on replacements [sic] parts and accessories.

As with insurance, the Dry Lease informs the Lessee that “Lessee’s proportionate share of the cost of all repairs and maintenance is included in Lessee’s lease payments to Lessor.” (Dry Lease, Section Nine.)

The extent of Lessee’s authority to take care of maintenance issues itself is limited by the Dry Lease as follows:

Lessee, through its pilot in command, is authorized to incur up to \$5000 worth of necessary maintenance and repair work for the Aircraft per flight, by certified and qualified mechanics, without the prior written approval of the Lessor. Lessee will be reimbursed for such expenditures upon Lessor’s receipt of invoices and proof of payment by Lessee.

(Dry Lease, Section Six.)

Otherwise, “Lessee will not have the right to alter, modify, or make additions or improvements to the Aircraft without the written permission of the Lessor.” (Dry Lease, Section Eight.)<sup>9</sup>

“[T]he Aircraft Dry Lease requires the Lessor (the Petitioner) to schedule and pay for all repairs and maintenance on the Aircraft . . . .” (Stip. 6.) These costs, like the cost of insurance, clearly go into the calculation of the lease payments per the language of the Dry Lease, which explains that the lease payments will include each Lessee’s “proportionate share” of such expense paid for by the Lessor.<sup>10</sup>

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<sup>9</sup> The parties quote language in the Dry Lease which requires the Lessee to be in exclusive operational control at all times. This requirement, found in the Restrictions on Use section, appears simply to restrict the Lessee from allowing others to use the Aircraft. Per 14 CFR 1.1, “Operational control, with respect to a flight, means the exercise of authority over initiating, conducting or terminating a flight.”

<sup>10</sup> Although the language regarding insurance costs is identical, it is interesting that insurance costs have not been broken out as an itemized cost as the maintenance costs have been.

The Dry Lease is supplemented by the Side Agreement in the form of a letter with a regarding line which reads, "Consideration for Aircraft pursuant to Aircraft Dry Lease dated March 17, 2011 ("Lease"), by and between [Lessee] and Citation Partners, LLC ("Lessor")." The Side Agreement begins, "This letter is to set forth our understanding concerning the amounts Lessee will pay for the Aircraft pursuant to the above-reference Lease."<sup>11</sup> (emphasis added in both quotations)

The Side Agreement indicates the amounts per flight hour the Lessee will be charged under the Lease, followed by a clarification of which party is responsible for paying which types of expenses. In the fee portion of the January 2015 letter, the Lessee will pay a total of three hourly rates based on the number of flight hours the Aircraft is used by the Lessee.<sup>12</sup> Two hourly amounts are listed under "Hourly Fee." According to the Stipulation, the first amount (\$724.50) represents charges the parties agree are taxable and the second charge (\$488.00) represents expenditures paid by the Lessor for aircraft repair parts and maintenance. Petitioner asserts the second hourly fee charge should not be taxable. A third hourly charge (\$292.26) reflects amounts paid by the Lessor for an engine maintenance program. Petitioner asserts this fee also should not be subject to tax.

Below the hourly fee descriptions, the Side Agreement clarifies the parties' responsibilities for expenses. The Lessor's list includes scheduled and unscheduled maintenance. The Lessee's list does not include any maintenance related expenses.

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<sup>11</sup> The Agreement does not mention nor do the billing statements show a separate \$1.00 billed in keeping with the first Section of the Dry Lease.

<sup>12</sup> The amounts referenced are from the sample Side Agreement attached to the Petition as Exhibit D and dated January 1, 2015.

## ISSUE

The question is whether sales tax applies to the full lease payment or whether certain portions can be carved out as non-taxable because those portions represent non-taxable expenditures incurred by the Petitioner/Lessor which are essentially passed on to the Lessees in the lease price.

### *Reimbursement*

The parties frame the issue as a question regarding reimbursement. (Stip. ¶¶ 3, 5, 11, 12, and 13, as well as the parties' briefs.) In support of that label, since the end of 2014, in the Side Agreements, Petitioner has allocated the full repairs and maintenance costs over all Lessees according to the flight hours the Aircraft was used by each Lessee, arriving at what the parties consider an "exact dollar amounts attributable to each Lessee" for repairs and maintenance as a function of flight hours.

That starting point, reimbursement, presupposes that each Lessee was obligated to pay for repair and maintenance such that the Lessor, in effect, paid the expenses on behalf of the Lessees. That is not what happens under these Agreements.

The ease of determining how much of any expense is proportionately attributable to each Lessee does not transform the Lessor's expenses into separate and direct obligations of the Lessee. Under the Dry Lease, the Lessee must inspect the Aircraft before taking it for flight, and the Lessee must alert the Lessor to any observed need for repair. But it is the Lessor who is obliged to arrange for and pay for all repair and maintenance.<sup>13</sup> The

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<sup>13</sup> The Dry Lease allows the Lessee to make some small repairs (up to \$5000) for which the Lessor will reimburse the Lessee.

Lessor “does not want, and cannot allow, Lessees to take the Aircraft or the engines to any other maintenance or engine repair shop and risk air worthiness of the Aircraft.”<sup>14</sup> (Stip. 9.)

The Dry Lease, with its Side Agreement, does not confer a responsibility for maintenance on the Lessee. To the contrary, it is the Lessor who is expressly responsible for the repairs and maintenance. Because the Lessees are not obligated to maintain the aircraft, they are not reimbursing the Lessor for something paid on their behalf. Thus, this portion of the lease payment is not a reimbursement.

Moreover, if, for example, a Lessee experiences a mechanical malfunction, e.g., a light on the wing burns out, and spends less than \$5000 for repairs, under Section 6 of the Dry Lease, the Lessor will reimburse the Lessee for that repair work and then spread the cost proportionately over all Lessees. Spreading that cost over all Lessees is evidence that the repair and maintenance work is a business cost the Lessor builds into the lease price charged to all Lessees rather than a reimbursement from Lessees to Lessor for maintenance. If this actually were a reimbursement, there would be no need for the \$5,000 reimbursement clause; each particular Lessee would simply pay for all maintenance actually incurred during use.

### *Measure of Sales*

This case involves a lease of an aircraft. Leases of tangible personal property are taxable in Wisconsin. Wis. Stat. § 77.52(1b). The tax is levied upon the sales price of the lease. Wis. Stat. § 77.52(1)(a). Sales price is defined as the “full consideration” for which

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<sup>14</sup> With the exception of the \$5000 maximum reimbursable repairs.

tangible property is leased, with no deduction for costs or other expenses of the seller. Wis. Stat. § 77.51(15b)(a).

The details of consideration for the Lease are described in the Side Agreement, which shows "the amounts Lessee will pay for the Aircraft pursuant to the above-reference Lease." The full consideration for the Lease is the sum of all three hourly rates shown in the more recent Side Agreement.

Under Wis. Stat. § 77.51(15b)(a), "Sales price" means the total amount of consideration . . . without any deduction for" 1) the seller's cost of the property sold, or for 2) service costs "or any other expense of the seller." Although the sale of repair and maintenance parts and service for aircraft is now generally exempt under Act 185, the expenditures for those repair and maintenance parts and services are not separately exempt when incorporated into the lease payments of a subsequent lease of the entire Aircraft. The ability to itemize a seller's expenses does not remove those costs from the sale price of the lease.

Itemization also does not convert Petitioner into a seller of exempt repair parts or a seller of exempt maintenance services.<sup>15</sup> When Petitioner purchases such goods and services, Act 185 could apply to exempt those purchases. However, in the transaction between the Petitioner and its Lessees, the Petitioner is not selling excluded repair parts to or performing exempt repair and maintenance service for its Lessees, so Act 185 does not apply.

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<sup>15</sup> Under the Dry Lease, it is apparent that insurance costs could be similarly separated out and allocated upon flight hours, but those expenses are also the obligation of the Lessor. Such itemization would not mean the Lessor is selling insurance.

The parties agree, and rightly so, that if the Lessees had paid for the repairs and maintenance directly, those transactions could be exempt from taxation per Act 185. But the Lessees do not pay these costs directly.<sup>16</sup> They do not even pay for repairs and maintenance due to their own specific use (for example, something that wears out while the Aircraft is in their possession), but are charged a proportion of the total cost of maintenance spread over all Lessees' use.

Perhaps our holding is, as Petitioner asserts, a case of form over substance. However, we must evaluate the facts and apply the law as written. We do not find ambiguity in the statutory provisions at issue, so we refrain from comment on legislative history or intent. Instead, we find the Petitioner is not selling exempt repair parts, nor is the Petitioner providing exempt aircraft engine or maintenance services. Although a portion of the lease payment can be said to represent Petitioner's expenses for repairs and maintenance, the Lessees are simply contracting with the Petitioner to lease the Aircraft. It is worthwhile noting that, because the Petitioner's purchases of the repairs and maintenance were not taxed, the Lessees are not subject to what could possibly be viewed as double taxation.

Petitioner posits a handful of undeveloped arguments in its response brief. First, Petitioner fails to show evidence of an agency relationship that requires Petitioner to arrange for and pay for repairs on behalf of the Lessees. As noted, the Dry Lease and Side Agreements expressly state the opposite. Petitioner has the obligation to maintain the

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<sup>16</sup> Other than the small expenditures allowed under the Dry Lease allows, which the Lessor reimburses.



Aircraft and the cost related to that maintenance are included in the lease payments. The Lessees have no express duty to maintain the Aircraft. The Petitioner does not do so as the Lessees' agent.

Second, Petitioner urges us to "collapse" the related entities into a single entity because they have "100% common ownership." This argument is underdeveloped. There is no evidence regarding how these entities handled tax reporting, nor of details surrounding the related corporate structures beyond a brief description of ownership percentages, which differ for each entity.<sup>17</sup> No evidence was presented of the specifics of lease payments and taxes collected, if any, with respect to these two particular Lessees. We reject this argument in keeping with *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-245, 430 N.W.2d 366, 369 (Ct. App. 1988) (we need not address undeveloped arguments).

Petitioner argues that this conclusion is inequitable and places small business owners at a tax disadvantage. It is not our role to determine the intent of the legislature unless we find ambiguity, which we do not. *Kalal v. Circuit Court of Dane Co.*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110 ("It is the enacted law, not the enacted intent, that is binding on the public.") This holding may or may not have been an intended consequence of Act 185; if it is not, it is for the legislature to adjust its language accordingly.

### CONCLUSIONS OF LAW

1. The parties' stipulation presents a sufficient factual basis to allow for summary judgment in this case.

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<sup>17</sup> Affidavit of Duane Foulkes, ¶ 5, states that Citation Partners, LLC, is owned 97.5% by Mr. Foulkes, with the remaining 2.5% owned by his daughters. Apache Holdings, Inc., one of the Lessees, is owned 100% by Mr. Foulkes. Apache Leasing, LLC, another Lessee, is owned 2/3 by Mr. Foulkes and 1/3 by his daughters.

2. For the purposes of taxation, the sales price of the leases includes the full amount charged and paid to the Petitioner by its Lessees.

3. While Act 185 may apply to Petitioner's purchase of aircraft maintenance services and repair parts, it does not apply to any portion of the subsequent lease payments to Petitioner from its Lessees. Sales price is the total consideration received without any reduction for such expenses of the seller. The cost of maintenance services and repair parts is an expense of the seller which is not to be deducted from the "sales price" of the leases.

4. The Department is entitled to summary judgment as a matter of law.

**ORDER**

Based on the foregoing, it is the order of this Commission that the Department's Motion for Summary Judgment is granted, its Redetermination is upheld, and the Petitioner's Petition is dismissed.

Dated in Madison, Wisconsin, this 4th day of December, 2019.

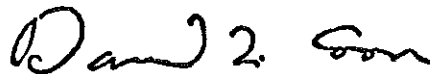
WISCONSIN TAX APPEALS COMMISSION



Elizabeth Kessler, Chair



Lorna Hemp Boll, Commissioner



David L. Coon, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION  
5005 University Avenue - Suite 110  
Madison, Wisconsin 53705

**NOTICE OF APPEAL INFORMATION**

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

***Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION***

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

**AND/OR**

***Option 2: PETITION FOR JUDICIAL REVIEW***

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.