

STATE  
OF  
WISCONSIN

CIRCUIT COURT  
BRANCH II

COUNTY  
OF  
DODGE

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Citation Partners, LLC,  
Petitioner,  
vs.

Case No. 19 CV 612

**FILED  
IN THE CIRCUIT COURT**

**AUG 20 2020**

Wisconsin Department of Revenue,  
Respondent.

DODGE COUNTY WI  
*Lynn M. Hron*  
CLERK OF COURTS

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**DECISION AND ORDER ON JUDICIAL REVIEW**

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This is a petition by Citation Partners, LLC (hereinafter "Citation") for Ch. 227 judicial review of a decision of the Tax Appeals Commission (hereinafter the "Commission"). The respondent is the Wisconsin Department of Revenue (hereinafter the "Department"). Citation leases an aircraft to its customers and the issue is whether Citation must pay sales tax on the reimbursement of aircraft maintenance, engine maintenance, and parts costs charged to Citation's customers. The Commission concluded the reimbursements received by Citation were subject to sales tax

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

The factual background of this dispute is set forth in the petition and the briefs, and the facts are stipulated. The facts will not be repeated in detail. A summary of pertinent facts from the petition is set forth below.

Citation is a limited liability company with its headquarters and principal place of business in Beaver Dam, Wisconsin. Dodge County Circuit Court is the proper venue.

Citation owns a Cessna Citation Aircraft (the "Aircraft") and leases it to related and third-party entities pursuant to a contract called the Aircraft Dry Lease ("Dry Lease"). The Dry Lease states specific maintenance procedures for the Aircraft and provides that Citation will control the maintenance and repairs. Citation is to schedule and pay for all repairs and maintenance costs and the lessees are to reimburse Citation for their proportionate share of those costs.

Each lessee also executes a Side Agreement which identifies the specific maintenance costs for which the lessees will reimburse Citation. The pertinent Side Agreement as to this case provides an engine maintenance charge of \$286.42 per flight hour.

On July 1, 2014, Wisconsin Act 185 took effect. Act 185 created a comprehensive sales tax exemption for the sale of aircraft parts and for the repair and maintenance of any aircraft. Citation changed its lease invoicing procedure beginning November 1, 2014, separately identifying charges for aircraft maintenance parts and services. Previously, Citation had separately invoiced for engine maintenance. This invoicing procedure continued through December 31, 2015.

Before November 1, 2014, Citation had collected sales tax on the total price of the lease of the Aircraft to the lessees, including the Aircraft maintenance and engine maintenance costs. On November 1, 2014, Citation stopped collecting sales tax from the lessees on the portion of the lease payments that were attributable to the engine maintenance costs and Aircraft maintenance parts.

Citation was granted a refund by the Department for the period of July 1, 2014 through October 31, 2014 on sales tax previously paid to the Department and collected from lessees for aircraft maintenance and engine maintenance costs. This refund was apparently later rescinded by the Department.

The Side Agreements were also modified to carve out dollar for dollar reimbursement by each of the lessees of the Aircraft for engine maintenance costs.

The Commission considered this case on cross-motions for summary judgment based on stipulated undisputed facts. In a December 4, 2019 written Ruling and Order, the Commission held that Act 185 did not apply to any portion of the lease payments to Citation from any of the Lessees—including the reimbursement payments that were carved out for engine maintenance and aircraft maintenance. As a result, the Commission granted the Department's Motion for Summary Judgment, dismissed Citation Partners' allegations, and affirmed the Department's sales tax redetermination decision.

## STANDARD OF REVIEW

Unless the court finds a ground for setting aside, modifying or remanding an agency action, it shall affirm the agency's action. *Wis. Stat.* § 227.57(2). The burden is on the party seeking to overturn the agency action. *City of LaCrosse v. DNR*, 20 Wis.2d 168 (1984).

The courts apply one of three levels of deference to an agency's interpretation of a statute; (1) great weight, (2) due weight, or (3) de novo (no deference). *Maple Leaf Farms, Inc. v. DNR*, 247 Wis.2d 96, 100, 633 N.W.2d 720 (2001

The third level is the "no weight" or "de novo" standard. *Hoffman v. WERC*, 243 Wis.2d 1 (2001). The situations where this standard applies include areas of clear first impression, scope of authority to act, and where state statute and federal interpreted by the agency are in conflict. *Jocz v. LIRC*, 196 Wis.2d 273, 292, 538 N.W.2d 588 (1995). If the agency action was based on an incorrect interpretation of the law, the court can set aside or modify the action, or remand for further action under a correct interpretation of the law. *Geen v. LIRC*, 258 Wis.2d 498 (2002).

Under Chapter 227, when a court reviews a state agency's conclusions of law, including those of the Commission, the court shall afford no deference (de novo) to the agency's legal conclusions. *Tetra Tech EC, Inc. v. Wis. Dept. of Revenue*, 2018 WI 75, ¶ 3, 382 Wis. 2d 496, 914 N.W.2d 21.

## STATUTORY PROVISIONS

Wisconsin sales tax law is set forth in Chapter 77 of the Wisconsin Statutes. The lease of tangible personal property is generally 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.

The 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.

Act 185 is the basis for this litigation. It creates exemptions for the sale of aircraft parts and the repair and maintenance of aircraft.

Act 185 creates exemptions for tangible personal property and the selective sales tax on services in Wis. Stat. § 77.52(1) (2). The first exemption in Act 185 applies to all aircraft parts (i.e., tangible personal property), regardless of the manner that the aircraft is used:

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.  
*Wis. Stat. § 77.54(5)(a)3.*

The second Act 185 exemption excludes from sales tax the repair and maintenance services of any aircraft or aircraft parts:

(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 . . . . *Wis. Stat.* § 77.52(2)(a)10.

### ANALYSIS

The Department takes the position that under a “plain reading” of the statute defining “sales price”, the lessor’s costs and expenses may not be subtracted and that “labor or service cost” and “cost of materials” are expressly noted as taxable and there is no mention of exemption. See *Wis. Stat.* § 77.51(15b)(a). The exemptions are carved out for selling, performing or furnishing repairs and maintenance to an aircraft and sale of parts used to modify or repair an aircrafts. See *Wis. Stat.* § 77.54. The Department argues that since Citation does not do the repairs or maintenance and does not actually sell parts, the exemptions do not apply.

Citation argues that the Dry Lease, Side Agreement and invoicing procedures essentially place them in an agency position with their lessees and since Citation is an agent, the exemptions should apply to Citation as they would to any direct purchaser of repairs, maintenance or parts.

An **agency** relationship "results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his **control**,

and consent by the other so to act." Hoefl v. Friedel, 70 Wis. 2d 1022, 1034, 235 N.W.2d 918 (1975). The level of control attributed to the lessees by Citation is set forth in the agreements and the course of conduct. The lessee is to inspect the aircraft and maintenance records and determine whether any repairs or maintenance are needed. The hourly costs are predetermined by rates from the company doing the actual work and providing labor and parts. The lessee pays its proportionate share. Although the control exercised here is perhaps not typical, this is a unique situation. The Court finds there is sufficient control and that an agency relationship does exist. It is acknowledged by the Commission and not disputed that if the lessees had made direct payments to the vendors for the repairs, maintenance and parts, the payments would be exempt from sales tax. The agency determination supports a finding of exemption.

Further support for exemption comes from the language and history of Act 185. Legislative history stated by Citation shows the Legislature intended to expand the exemption beyond large commercial airlines to small aviation owners. The intent was to not tax aircraft repairs, maintenance and parts sales, both in direct sales and leases. To ignore the language of Act 185 merely because the lessee reimbursed Citation rather than paying the vendors directly is contrary to the language of Act 185 and the Legislative intent. Aircraft repairs, maintenance and parts are exempt from sales tax, and applying de novo review, the Court reverses the Commission.



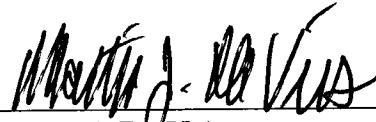
## CONCLUSION

Based on the foregoing, the Commission's ruling and order are reversed. The reimbursements received by Citation from July 1, 2014 to December 31, 2015 are exempt from sales tax. Any additional orders necessary to accomplish this finding are to be submitted by agreement or the 5-day rule if possible.

This is a final judgment or order for purposes of appeal. See *Wis. Stat.* § 808.03(1).

Dated this 20<sup>th</sup> day of August, 2020.

BY THE COURT:



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Martin J. DeVries  
Circuit Court Judge, Branch II  
Dodge County, Wisconsin

Distribution:

All counsel via electronic filing.