

OHIO SUPREME COURT GROUNDS PI IN THE SKY

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On December 7, 2018, the Ohio Supreme Court issued its opinion in *Pi In The Sky, L.L.C. v. Testa*, Slip Opinion No. 2018-Ohio-4812, finding that Pi In The Sky (“Pi”) was liable for use tax on the purchase of an aircraft that Pi claimed was purchased for resale. The Court determined that based on the facts and circumstances related to Pi’s purchase and purported lease of the aircraft, Pi was not “engaged in business” and thus could not purchase the aircraft exempt from sales tax.

Pi purchased the aircraft from an Indiana vendor. On the line on the purchase agreement for sales due on the purchase, the phrase “Out of State” was typed. The aircraft was hangered in Ohio. The Tax Commissioner assessed use tax against Pi for its use of the aircraft in Ohio. Pi filed a petition for reassessment objecting to the assessment, claiming the aircraft qualified for the resale exception because the aircraft was immediately leased to Mitchell’s Salon and Day Spa (“Mitchell’s”). Mitchell’s is the sole member of Pi. The owner and president of Mitchell’s is a licensed pilot and the primary user of the airplane. The owner and president of Mitchell’s obtained a loan to help fund the purchase of the aircraft and signed the purchase agreement. The owner and president of Mitchell’s also signed the lease agreement as president of both the lessee (Mitchell’s) and the lessor (Pi). The signed lease had no fixed lease term and prescribed a rate of \$80 per flight hour for leasing the airplane. Many of the logged flights of the leased aircraft were to or from the

owner and president of Mitchell's lakefront home in Northern Michigan during the summer. Based on these facts, the Tax Commissioner found that the purchase did not qualify for the resale exception because Pi did not meet the requirement in the statute that the purchaser claiming the exception be engaged in business and issued a final determination affirming the assessment.

Pi appealed to the Board of Tax Appeals ("BTA"). Based on the above facts, the BTA concluded that Pi did not purchase the aircraft for purposes of leasing it to others, as part of a business and affirmed the Tax Commissioner. Pi then appealed to the Ohio Supreme Court.

The Court first addressed the issue of whether Pi's purchase of the aircraft qualified for the resale exception found in Ohio Revised Code (R.C.) 5739.01(E):

(E) "Retail sale" and "sales at retail" include all sales, except those in which the purpose of the consumer is to resell the thing transferred or benefit of the service provided, by a person engaging in business, in the form in which the same is, or is to be, received by the person.

The Court focused its analysis on the "engaging in business" requirement of the exception. R.C. 5739.01(F) defines what "business" means:

(F) "Business" includes any activity engaged in by any person **with the object of gain, benefit, or advantage, either direct or indirect**. "Business" does not include the activity of a person in managing and investing the person's own funds. (emphasis added)

Based on the BTA's findings, which the Court noted were uncontroverted, the Court found that the BTA's conclusion was supported by the evidence and determined that Pi was not engaging in an activity with any "object of gain, benefit, or advantage" within the meaning of R.C. 5739.01(E).

The Court also dismissed Pi's argument that Pi was engaged in business because it held a vendor's license authorizing Pi to make taxable sales and Pi received payments under the lease agreement, noting that the payments were "received under the lease lacking in substance and of a doubtful arm's-length character."

It is important to note that the Court declined to address whether the transaction met the definition of a "sham transaction."

If you would like to discuss the Pi In The Sky decision or sales and use tax questions relating to the purchase of an aircraft, please contact [John Trippier](#), [Rich Farrin](#), or [any of the other professionals](#) at Zaino Hall & Farrin LLC.

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