

Petitioner's Protest

Petitioner states that IDAPA Rule 35.01.02.012.09.i specifies "...the amount subject to tax is the cost of material to the contractor who fabricated the goods"; therefore, Petitioner contends it is responsible for use tax only on the cost of materials incorporated into the concrete panels.

Relevant Tax Code and Analysis

Idaho Code § 63-3621 imposes use tax on all tangible property brought into Idaho unless an exemption applies. The use tax is complementary to the sales tax, which imposes tax on the retail sale of tangible personal property within Idaho. If the seller of goods fails to, or cannot, charge sales tax and no exemption applies, the buyer is obligated to pay a use tax directly to the state. *See* Idaho Code § 63-3621.

Idaho Code § 63-3609(a) provides in pertinent part:

- (a) All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

Contractors are the consumers of the materials they use, and all sales to or use by contractors of tangible personal property are defined as a retail sale. *See* IDAPA 35.01.02.012.01.

Further, IDAPA 35.01.02.012.01.c specifies "the terms 'contractor' and 'subcontractor' are not applicable to persons who merely sell tangible personal property in the form of building materials, supplies, or equipment to construction contractors for delivery at the job site without any requirement that they install such tangible personal property."

In this case, Petitioner contends use tax is due only on the materials utilized by [Redacted] to construct the goods. However, [Redacted] does not meet the definition of a "subcontractor" provided by IDAPA Rule 012 because [Redacted] did not have "any requirement that they install such tangible personal property"; rather, [Redacted] is a retailer in this case, and Petitioner's purchase of goods from

[Redacted] is a retail sale as defined in Idaho Code and IDAPA Rule. Use tax is applicable to the entire contract between [Redacted] and Petitioner, as tax applies to the entire price charged for custom-made goods sold by the maker. *See* IDAPA 35.01.02.012.08.

IDAPA 35.01.02.012.09 provides “The contractor owes use tax on the value of the job materials at the time he exercises right or power over them.” In this case, [Redacted] shipped fabricated custom goods to Petitioner’s location in Washington. Petitioner transported the goods into Idaho and installed them into real property. Based upon the information provided, the Commission concludes Petitioner owes use tax on the goods provided by [Redacted].

The Commission, having considered all of the information available, determined that [Redacted] provided materials that Petitioner installed into real property within the state of Idaho [Redacted] is a supplier, not a contractor. The Commission finds use tax is due on the entire amount paid to [Redacted] by Petitioner.

Conclusion

The Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner’s use tax liability for the period May 1, 2017, through May 31, 2017.

The Bureau added interest to the sales and use tax deficiency. The Commission reviewed this addition, found it to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through February 28, 2019, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated October 25, 2017, 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 and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$105,115	\$6,739	\$111,854

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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

DATED this _____ day of _____, 2018.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2018 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:

[Redacted]

Receipt No.
