

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted]) DOCKET NO. 1-562-404-864
)
)
)
_____) DECISION
Petitioner.)

The Idaho State Tax Commission (Commission) reviewed the case of [Redacted] (Petitioner), and upholds the Notice of Deficiency Determination (Notice) dated October 27, 2017. This means that Petitioner is responsible for sales tax, penalty, and interest for the period December 1, 2016, through August 31, 2017 in the **total amount of \$1,097**.

Background and Audit Findings

On May 12, 2017, Petitioner began operating a video game lounge in [Redacted] Idaho. Petitioner offers its customers two different video game packages. The first is called [Redacted] (Passes) and allows a customer to play video games all day. The second is called [Redacted] (Time) and allows a customer to play by the hour.

The Sales Tax Audit Bureau (Bureau) conducted a routine comprehensive audit for the purpose of determining Petitioner’s compliance with Idaho sales tax and use tax laws. The Bureau found non-taxed ad hoc sales, Time, and Passes. The Bureau held the non-taxed sales subject to sales tax which resulted in a liability of \$1,061.

The Bureau also reviewed Petitioner’s purchases which resulted in a use tax liability of \$1,690. Petitioner did not dispute the Bureau’s audit findings for purchases. Therefore, they will not be addressed in this decision.

Petitioner’s Protest

On June 16, 2017, Petitioner called the Commission’s customer service line and spoke with a Commission representative (Representative) to verify it was correctly charging sales tax. Based on

the facts presented, the Representative's interpretation of Idaho Code was that sales tax should not be charged on the Time and Passes. Petitioner stopped collecting sales tax on both items at this point.

On August 31, 2017, the Bureau contacted Petitioner for an audit, and explained sales tax was due on the Time and Passes. Petitioner began collecting and remitting tax on the Time and Passes again. Petitioner argues that coming up with the "missing money" now is an unfair burden and hardship on its new business after the Representative informed them sales tax was not due on the sale of Time and Passes.

Relevant Tax Code and Analysis

The sale of tangible personal property is subject to sales tax, unless an exemption applies, section 63-3619, Idaho Code. The fees paid for the use of video games and gaming equipment for recreation are also subject to sales tax, IDAPA 35.01.02.129.

Petitioner collected sales tax on all of its Time and Pass sales from the time it opened through June 16, 2017. Based upon the telephone conversation with the Representative on June 16, 2017, Petitioner stopped charging sales tax.

Given only these facts, Petitioner's argument appears consistent with the defense of equitable estoppel. Equitable estoppel arises when:

"a party makes a false representation or concealment of a material fact with actual or constructive knowledge of the truth; it is made with the intent that it be relied upon; the party asserting estoppel does not know or could not discover the truth; and the party asserting estoppel relies on it to the party's prejudice."

Hecla Min. Co. v. Star-Morning Min. Co., 122 Idaho 778, 782, 839 P.2d 1192, 1196 (1992); *Allen v. Reynolds*, 145 Idaho 807, 186 P.3d 663, (2008).

However, the Idaho Supreme Court has ruled:

"In the levy and imposition of taxes, the state acts in its sovereign capacity, and hence, in an action for the collection thereof, cannot be subjected to an equitable estoppel." (Citations omitted.)

“The government is not estopped by previous acts or conduct of its agents with reference to the determination of tax liabilities or by failure to collect the tax, nor will the mistakes or misinformation of its officers estop it from collecting the tax.” (Citations omitted.)

State of Idaho v. Adams, 90 Idaho 195, 409 P.2d 415 (1965).

During the telephone conversation on June 16, 2017, the Representative instructed Petitioner to request verification of Time and Pass sale taxability from taxrep@tax.idaho.gov (taxrep). Petitioner provided the Commission with a copy of an email sent to taxrep, dated June 16, 2017, which requested additional tax guidance on this issue. Petitioner did not wait for taxrep’s response and immediately stopped collecting sales tax on Time and Passes. On July 8, 2017, Petitioner sent another email to taxrep to follow-up on its request for guidance. On July 10, 2017, a Tax Policy Specialist (Specialist) from the Commission responded to Petitioner’s email, stating it was not possible to answer Petitioner’s questions from the limited facts stated in Petitioner’s original email. The Specialist offered Petitioner the chance to provide additional information that would clarify the issue; however, Petitioner did not do so. Petitioner continued to treat its sales of Time and Passes as nontaxable transactions until the Bureau contacted Petitioner for audit.

While Petitioner may have originally received guidance from the Representative stating the Time and Passes were not subject to sales tax, the Representative immediately directed Petitioner to seek verification. The Commission finds Petitioner had a responsibility to seek the verification advised by the Representative, as well as provide a complete set of facts sufficient for the Specialist to determine the taxability of Petitioner’s Time and Pass sales.

Additionally, section 63-3627(a), Idaho Code, states “Every person with the duty to account for and pay over any tax which is imposed upon or required to be collected by any taxpayer under this chapter on behalf of such taxpayer as an officer, member or employee of such taxpayer,

shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.” Therefore, the Commission finds Petitioner had a duty to collect and remit sales tax on the Time and Pass sales and is liable for tax not collected from its customers, per IDAPA 35.01.02.129, and section 63-3627(a), Idaho Code.

On appeal, a deficiency determination issued by the Commission “is presumed to be correct, and the burden is on the taxpayer to show that the Commission’s decision is erroneous.” *Parker v. Idaho State Tax Comm’n*, 148 Idaho 842, 845, 230 P.3d 734, 737 (2010) (citing *Albertson’s Inc. v. State Dep’t of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)). The Commission requires Petitioner to provide adequate evidence to establish that the amount asserted in the Notice is incorrect. Here, Petitioner did not provide adequate evidence. As a result, the Commission upholds the Notice.

Conclusion

In this case, Petitioner contended the audit findings were incorrect because of guidance received from the Representative. However, the Representative directed Petitioner to seek further verification of Time and Pass sale taxability. When Petitioner emailed taxrep for further guidance, it did not provide a complete set of facts sufficient for the Specialist to determine Petitioner’s Time and Pass sale taxability. The Specialist notified Petitioner additional facts were needed to clarify the issue, but Petitioner did not provide the additional facts.

The Courts have ruled mistakes or misinformation of government officers do not prevent it from collecting the tax. In addition, Petitioner is required to collect and remit the taxes imposed by law and is personally liable for taxes it did not collect from its customers. Therefore, the Commission finds the amounts held taxable by the Bureau to be appropriate.

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be an accurate representation of Petitioner's sales tax liability for the period December 1, 2016, through August 31, 2017.

The Bureau added interest to the sales tax deficiency. The Commission reviewed this addition, and finds it to be appropriate per sections 63-3045 and 63-3046, Idaho Code, and has updated interest accordingly. Interest is calculated through October 31, 2018, and will continue to accrue at the rate set forth in section 63-3045(6), Idaho Code until paid. No penalty was assessed.

THEREFORE, the Notice, dated October 27, 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>
\$1,061	\$36	\$1,097

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.
