

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-743-112-192
[Redacted])	
)	
Petitioner.)	DECISION
_____)	

The Idaho State Tax Commission (Commission) reviewed the case of [Redacted] (Petitioner). The Commission upholds the Notice of Deficiency Determination (Notice) dated July 12, 2017. This means that Petitioner is responsible for sales tax, penalty, and interest for the period January 1, 2010, through December 31, 2015, in the **total amount of \$13,106.**

Background and Audit Findings

Petitioner advertises a vacation rental property in [Redacted] Idaho through a vacation rental website. The Tax Discovery Bureau (Bureau) was unable to find a sales tax or travel and convention tax permit for Petitioner. Therefore, the Bureau sent Petitioner a letter on May 11, 2016, informing Petitioner that rentals of a hotel/motel, home, vacation home, cabin, lodge, condominium, townhouse, or any other structure meant to provide sleeping accommodations for periods of less than 31 days are subject to the state sales tax, and travel and convention tax. The letter instructed Petitioner to perform a self-review of his rental activity and apply for the appropriate permits if he had not registered or collected tax on his lodging income. On August 17, 2016, Petitioner applied for and received Idaho sales tax, and travel and convention tax permits.

Petitioner provided the Bureau with the 2010 through 2015 rental information from his income tax return. This information showed Petitioner rented the vacation property for 66 days in 2011, 67 days in 2012, 93 days in 2013, 90 days in 2014, and 85 days in 2015. The Bureau used

the annual rental information to calculate the sales tax, and travel and convention tax due for the audit period.

Petitioner's Protest

Petitioner objects that he is providing short-term lodging and would be subject to the sales tax levied on short-term rentals of real property. Since Petitioner's reported rental days did not exceed 25 percent in any of the years assessed, Petitioner contends that he was not "regularly engaged" in business activities as defined in the Idaho hotel and motel rules.

In addition, Petitioner claims that [Redacted] received favorable treatment regarding these issues and requests similar treatment for his tax liability.

Relevant Tax Code and Analysis

A short-term rental of real property is subject to sales tax, unless an exemption applies. Idaho Code § 63-3619. A sale is defined as providing hotel, motel, campground, or trailer court accommodations, non-depreciable goods directly consumed by the customers and included services, except where residence is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty days. Idaho Code § 63-3612(g).

Petitioner objects to the Bureau's determination that he is providing short-term lodging and is required to remit sales tax on short-term rentals. However, Petitioner did not provide documentation to show the accommodations he provided were anything other than short-term rentals. The advertisements available online for this property show he is providing lodging or accommodations consistent with Idaho Code §§ 63-3612 and 67-4711.

Petitioner also contends that he does not meet the definition of "hotel" and "motel" referenced in the Idaho hotel and motel rules because he is not "regularly engaged" in providing accommodations. A hotel or motel is defined as any person, partnership, corporation, trustee,

receiver, or other association, regularly engaged in the business of furnishing rooms for use or occupancy, whether personal or commercial, in return for a consideration or which holds itself out as being regularly engaged in such business. IDAPA 35.01.06.010.02. While “regularly engaged” has not been defined in the rules, the Commission determined this is not the basis the statute uses to impose the tax. The key words driving the statute are “providing accommodations.” The act of providing accommodations determines the taxability, rather than any specific percentage of time the accommodations are rented throughout the year.

In addition, Petitioner requests the same exemption the Commission supposedly provided to [Redact] and other short-term rental marketplaces. In this case, Petitioner is the lodging operator or owner of the short-term rental, not the marketplace or platform of the short-term rental. The Short-Term Rental and Vacation Rental Act (Act), which took effect January 1, 2018, requires the marketplace to collect and remit tax on behalf of the owner or lodging operator, Idaho Code § 63-1801, et al. The Act does not exempt owners from collecting and remitting rental tax when they rent their own vacation properties apart from the marketplace. In addition, the Act is not retroactive. Therefore, taxes that should have been collected and remitted, prior to the new Act taking effect, are still due.

Conclusion

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.

Absent information to the contrary, the Commission finds the Notice to be a reasonable representation of Petitioner's sales tax liability for the period January 1, 2010, through December 31, 2015.

The Bureau added interest and penalty to the sales tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 3046, and has updated interest accordingly. Interest is calculated through May 31, 2018, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice dated July 12, 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, penalty and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$10,716	\$536	\$1,854	\$13,106

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.
