

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of _____)
[Redacted]) DOCKET NO. 38989
)
)
Petitioner.) DECISION
_____)

On March 25, 2014, the staff of the Sales, Use and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to [Redacted] (Petitioner), proposing use tax, penalty, and interest for the period October 1, 2011, through December 31, 2012, in the total amount of \$369,569.

On May 22, 2014, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner’s request, the Commission held an informal hearing on Tuesday, September 23, 2014. After the informal hearing, Petitioner provided substantial additional documentation regarding the transactions held taxable in the audit. The Commission, having reviewed the audit file, information obtained during the hearing, and correspondence received thereafter, hereby issues its decision to uphold the audit findings.

Background and Audit Findings

Petitioner sells and leases communications equipment and provides monthly service access. Petitioner owns some communications towers, but also rents tower space. Petitioner is a related company to [Redacted], and was organized solely to execute an emergency communications contract with [Redacted]. [Redacted] is a management and operating contractor for Idaho National Laboratory (INL) and has been granted a Direct Pay Authorization by the Commission. If a sale or rental of tangible personal property were to be made from Petitioner to [Redacted], under the Commission’s rules, such sale or rental

would be exempt. *See* IDAPA 35.01.02.112. Petitioner would not be responsible for payment of sales tax or use tax due to the Direct Pay Authorization.

In this contract, Petitioner maintains and services the communications equipment. The Bureau conducted a routine comprehensive audit for the purpose of determining compliance with Idaho sales tax and use tax laws. Errors were noted in Petitioner's asset additions (communications equipment), which were held subject to use tax, as the Bureau determined Petitioner utilized this equipment to provide a service, rather than a sale or equipment rental to INL or [Redacted].

Petitioner's Protest

Petitioner protested the imposition of use tax on the communication equipment, claiming the equipment in question is being sold or rented to the federal government, an exempt entity. Petitioner contends it is not the end user of the equipment, and therefore is not subject to sales tax or use tax. Petitioner also protested the negligence penalty imposed by the Bureau.

Relevant Tax Code and Analysis

Idaho imposes a tax on the sale of tangible personal property. The Sales Tax Act includes in the definition of sale the lease or rental of tangible personal property:

- Sale.** (1) The term "sale" means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter.
- (2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged or bartered . . .
- (h) The lease or rental of tangible personal property. . .

Idaho Code § 63-3613.

Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho.

In this case, the equipment was financed by Petitioner through [Redacted] for the purpose of fulfilling a contract with [Redacted] to provide and maintain communications equipment. In the event Petitioner defaulted on the loan, the equipment would be owned by [Redacted].

Initially, Petitioner asserted the communications equipment was sold to [Redacted]. After the informal hearing, Petitioner submitted additional documents in support of its amended position that the communications equipment was rented, not sold, to [Redacted]. The Bureau reviewed the additional documentation provided by Petitioner, and believes it is possible that a portion of the equipment was leased or rented to [Redacted]. However, the Bureau did not receive sufficient documentation to support that position and/or determine a correct apportionment.

A news release issued by INL on [Redacted], provided an overview of the relationship between INL, [Redacted], and Petitioner. The news release quotes Petitioner as stating “This is a provided-service contract where INL pays a fixed rate for unlimited communication. INL responders will have new state-of-the art portables, in-vehicle systems and new dispatch consoles throughout the facility...” The release also specifies that Petitioner “will maintain the infrastructure and make necessary equipment upgrades,” and clarifies that “day-to-day management and operation of the laboratory is the responsibility of [Redacted].”

After reviewing the documentation provided by Petitioner, the Commission is unable to confirm that the communications equipment was leased, rented, or sold to [Redacted]. Petitioner retained ownership of the communications equipment while providing a service, as described by the news release prepared by INL; therefore, Petitioner is the consumer of the equipment, and would be subject to sales tax or use tax on the communications equipment used to fulfill its service contract. The owner or supplier of the equipment or property used in a fully operated equipment

rental is the consumer of the equipment or property, and is subject to sales tax or use tax when he buys or uses the equipment in Idaho. IDAPA 35.01.02.024.03.c.

Petitioner's obligation to pay sales tax or use tax on the equipment would not change due to the service contract benefitting a tax-exempt organization, such as the INL, or an entity with a Direct Pay Authorization, such as [Redacted] because no sale, lease, or rental of tangible personal property was made. Every retailer within the state of Idaho is required to keep records sufficient for the Commission to determine the amount of sales tax and use tax for which the retailer is liable. IDAPA 35.01.02.111.01. In this matter, the Commission found Petitioner failed to maintain and/or provide business records adequate to permit any adjustment for communications equipment either sold or rented by Petitioner as part of the service contract.

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." *See 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 will uphold the Notice.

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner's sales tax and use tax liability for the period October 1, 2011, through December 31, 2012.

The Bureau added interest and penalty to the sales tax and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045

and 63-3046, 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 of Deficiency Determination dated March 25, 2014, 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>
\$332,059	\$16,603	\$70,861	\$419,523
	Payment effective 5-27-2014:		(214)
	Total now due:		<u>\$419,309</u>

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.
