

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of

████████████████████

Petitioner.

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DOCKET NO. 0-207-669-248

DECISION

On August 14, 2018, 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 ████████████████████ (Petitioner), proposing sales tax, use tax, and interest for the period October 1, 2014, through May 31, 2017, in the total amount of \$4,439.

On October 18, 2018, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner’s request, the Commission held an informal hearing on March 19, 2019. The Commission, having reviewed the audit file, Petitioner’s protest, and information obtained at the hearing, upholds the Notice for the reasons that follow.

**Background and Audit Findings**

Petitioner operated a [Redacted] in [REDACTED] between July 2013 and June 2017, which sold [Redacted] items.

The Bureau conducted an audit for the purpose of determining Petitioner’s compliance with Idaho sales tax and use tax laws. In addition to Petitioner’s retail sales at the [Redacted], the Bureau discovered Petitioner also performed catering activities during the audit period and held these transactions subject to sales tax. Of the \$3,955 tax liability proposed by the Bureau, \$3,891 is tax due on these catering transactions, and \$65 is tax due on purchases/fixed assets. Interest was added to the Notice as required by statute.

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### **Petitioner's Protest**

Petitioner's protest states the catering services held taxable by the Bureau were for religious events where the food to be served was kosher. For these events, Petitioner asserts its customer would purchase the food ingredients, and pay sales tax at the time of purchase. Petitioner would then provide cooking, serving, and cleaning services using the food provided by the customer. In some cases, Petitioner also provided setup services for the customer's event. Petitioner contends that since the food was purchased by the customer, the transaction between itself and its customer was a service, and therefore should not be subject to sales tax.

### **Relevant Tax Code and Analysis**

Idaho Code § 63-3612(2)(b) provides that a sale includes "Furnishing, preparing, or serving food, meals, or drinks and nondepreciable goods and services directly consumed by customers included in the charge thereof."

Because Petitioner did not purchase the food ultimately consumed, Petitioner's contention that he provided only a nontaxable service is understandable. However, Idaho Code specifically lists the preparation and service of food as taxable transactions. Petitioner did not collect sales tax on fees it charged its customers. Such transactions are sales per Idaho Code § 63-3612(2)(b), and therefore are taxable under Idaho Code § 63-3619.

During the informal hearing, Petitioner stated that it provided some services that were not food-related, such as the setup of tables, chairs, and sound systems provided by the facility hosting the event. It is possible that some of the services performed by Petitioner not involving the preparation and/or service of food would not be taxable, if these services were separately stated on Petitioner's invoices. The Bureau noted that some of the invoices initially provided during audit field work were later altered by Petitioner to reflect different types of services. During the informal

hearing, Petitioner clarified that the invoices were not changed after the audit commenced; rather, a detailed invoice was provided to the customer as a quote for the services to be performed, and the lump-sum invoices were issued as a billing notice after services were provided.

The Commission reviewed the invoices provided by Petitioner and found that Petitioner's explanation of its invoices does not correspond with the records provided. To better understand the transactions at issue, the Commission requested other documentation of the services provided, such as contracts or other written communication exchanged with customers prior to their events taking place. Petitioner did not provide any records for the Commission to review. Therefore, the Commission upholds the sales tax assessed by the Bureau.

### **Conclusion**

On appeal, a deficiency determination issued by the Tax 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 Tax 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, 2014, 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 has updated interest

accordingly. Interest is calculated through November 15, 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 August 14, 2018, 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>
\$3,955	\$0	\$690	<u>\$4,645</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 \_\_\_\_\_, 2019.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019 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:

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████████████████████  
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Receipt No.

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