



the Bureau issued a Notice for use tax as calculated in the billing letter, plus a 5% negligence penalty and interest as required by statute.

### **Petitioner's Protest**

Petitioner protested the Notice, stating "We believe this determination is in error because we have paid sales tax on many of the invoices for this project."

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

Purchases of tangible personal property in Idaho are subject to tax unless an exemption applies. Idaho Code § 63-3619.

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. 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. IDAPA 35.01.02.012.01.

Petitioner installed metal panels into real property within the state of Idaho. As a contractor improving real property, Petitioner is the consumer of the materials used, and owes tax on those materials purchased in Idaho or brought into the state. Petitioner contends it paid sales tax on at least a portion of the materials used to improve real property; however, Petitioner has failed to provide any evidence to support its position that sales tax or use tax was paid.

The Bureau computed Petitioner's tax liability based upon industry averages for contracts of this nature, allocating 55% of the total contract price to the cost of materials used. This estimated materials cost was held subject to use tax. Without any additional information to consider, the Commission upholds the liability as calculated 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 use tax liability for the period June 1, 2017, through June 30, 2017.

The Bureau added interest and penalty to the sales 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 October 31, 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 July 17, 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>    |
|------------|----------------|-----------------|-----------------|
| \$59,531   | \$2,977        | \$5,816         | <u>\$68,324</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

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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:

██  
██████████  
██

Receipt No.

\_\_\_\_\_