

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

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Petitioner.

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DOCKET NO. 0-989-509-632

DECISION

On May 24, 2017, 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 July 1, 2012, through June 30, 2015, in the total amount of \$182,488. After the Notice was issued, Petitioner submitted additional documentation regarding some of the items held taxable in the audit. The Bureau reviewed these documents, and determined an adjustment was appropriate. The Notice was modified, and reflects an amount due of \$103,207.

On July 18, 2017, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner’s request, the Commission held an informal hearing on December 4, 2018. The Commission is fully advised of the contents of the audit file as well as information obtained at the hearing, and hereby issues its decision upholding the Notice as modified.

Background and Audit Findings

██████████ ██████████ is a Utah-based company which provides construction management/contractor services. Petitioner is a related entity located in Idaho, and since 1997 has fabricated structural steel for sale at retail and/or for use in contracts to improve real property. The Bureau conducted a routine comprehensive audit for the purpose of determining Petitioner’s compliance with Idaho sales tax and use tax laws. Errors were noted in Petitioner’s taxable sales, purchases, asset additions, and materials used to improve real property. No penalty was imposed.

Petitioner's Protest

Petitioner protested many of the items held taxable in the audit. After the Notice was issued, Bureau staff continued to work with Petitioner, and resolved all of the protested items except the projection of purchases held subject to use tax. According to Petitioner, it agreed to the Bureau sampling its purchases, with the understanding that the resulting variance would be projected over the remaining audit period. However, Petitioner contends that during the audit the Bureau had an opportunity to review Petitioner's purchases and related documentation for the entire audit period in detail. Therefore, Petitioner asserts the projection is unwarranted.

Relevant Tax Code and Analysis

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

The Bureau contends Petitioner agreed to the projection and did not question the projection in its protest. Petitioner's original protest letter does not mention the projection shown on the workpapers prepared by the Bureau. However, at some point after the Petitioner protested the Bureau's findings, Petitioner sent an email to the auditor which stated:

“...Thus, I flat reject any projections based on “sampling” from the U-1 and will continue to contest them. I have already gone through all of the transactions in the audit period and have, to my best knowledge, correctly picked up every transaction that should have included sales/use tax. To extrapolate that into an additional amount on worksheet U-1P is unacceptable.”

During the informal hearing, Petitioner reiterated its position that projecting the purchases reviewed by the Bureau over the remaining audit period was unwarranted, as Petitioner had provided purchase records for the entire period covered by the audit. The Commission contacted Petitioner after the informal hearing to discuss the information necessary to resolve the protested projection; however, Petitioner did not respond with any further documentation for the

Commission to consider. Petitioner has not shown that the projection is incorrect; therefore, the Commission will uphold the liability shown on the Notice, as modified 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.” 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 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 as modified.

Absent information to the contrary, the Commission finds the modified Notice prepared by the Bureau to be a reasonably accurate representation of Petitioner’s sales and use tax liability for the period July 1, 2012, through June 30, 2015.

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 September 30, 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 May 24, 2017, is hereby APPROVED as modified, 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>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$88,886	\$0	\$17,721	<u>\$106,607</u>
Less payment effective 6-20-2018:			(\$83,512)
Less payment effective 7-3-2018:			(\$12,958)
TOTAL DUE:			<u><u>\$10,137</u></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:

Receipt No.
