

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)

[Redacted])

Petitioner.)

DOCKET NO. 1-134-086-144

DECISION

On September 13, 2018, 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 sales tax, use tax, and interest for the period June 1, 2009, through May 31, 2016, in the total amount of \$59,829. After the Notice was issued, Petitioner submitted additional information regarding some of the items held taxable in the audit. The Bureau reviewed this information, and determined an adjustment was appropriate. The Notice was modified, and now reflects a total amount due of \$58,290.

On November 11, 2018, Petitioner filed a timely appeal and petition for redetermination of the Notice. The Commission mailed hearing rights letters to Petitioner on September 20, 2019, and October 21, 2019. Petitioner responded via telephone on December 18, 2019, and requested the Commission issue a decision in this matter. Having reviewed the audit file and Petitioner’s protest, the Commission upholds the audit findings for the reasons that follow.

Background and Audit Findings

Petitioner is a full-service landscaping business serving Southeast Idaho and Wyoming. Petitioner obtained an Idaho seller’s permit in July 2015, but closed the permit in March 2016 without remitting any sales tax and has remained unpermitted since then. The Bureau conducted a comprehensive audit to determine Petitioner’s compliance with Idaho sales tax and use tax laws, and found errors in Petitioner’s untaxed sales, ordinary purchases, and assets.

Petitioner's Protest

Petitioner's protest addresses two aspects of the audit. First, Petitioner asserts that a portion of its labor charges, held taxable by the Bureau as fabrication labor, is nontaxable installation labor. Also, Petitioner contends it should not be responsible for all the accrued interest because the audit was transferred between Bureau staff, resulting in delays during the audit.

The original Notice prepared by the Bureau held taxable all of Petitioner's labor related to holiday lights fabrication and installation. However, after the Notice was issued, Petitioner provided additional information to the Bureau regarding the labor charges. The Bureau reviewed this information, determined that five percent (5%) of the labor was taxable fabrication labor, and modified the Notice accordingly. On December 18, 2019, Petitioner advised the Commission it concurred with the adjustment made by the Bureau; therefore, this issue will not be addressed further.

Relevant Tax Code and Analysis

The Notice, as modified by the Bureau, includes an amount due as interest. Petitioner protested the addition of interest, asserting the Bureau was responsible for delays in completing the audit. Idaho Code § 63-3632 provides for the addition of interest to any tax deficiency, and specifies "interest upon any deficiency shall be assessed." The Commission finds interest is a statutory addition to tax deficiencies, and upholds the interest shown on the Notice.

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

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 modified Notice.

Absent information to the contrary, the Commission finds the Notice, as modified by the Bureau, to be a reasonably accurate representation of Petitioner's sales tax and use tax liability for the period June 1, 2009, through May 31, 2016.

The Bureau added interest to the sales tax 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 April 15, 2020, 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 September 13, 2018, is hereby APPROVED as modified by the Bureau, 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>
\$47,818	\$0	\$11,878	<u>\$59,696</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 _____, 2020.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2020 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]
[Redacted]
[Redacted]
[Redacted]

Receipt No.
