

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 1-333-003-264
[Redacted])	
)	
Petitioner.)	DECISION
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On May 4, 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 [Redacted] (Petitioner), proposing sales tax, use tax, and interest for the period November 1, 2013, through October 31, 2016, in the total amount of \$14,464.

On June 25, 2018, Petitioner filed a timely appeal and petition for redetermination of the Notice. At Petitioner’s request, the Commission held an informal hearing on November 27, 2018.

The Commission requested additional information on November 30, 2018 and January 3, 2019. After reviewing the information Petitioner provided and the audit file, the Commission upholds the Notice for the reasons that follow.

Background and Audit Findings

[Redacted] (Petitioner) operates a retail music and supply store located in [Redacted] Idaho. Petitioner provides instrument rentals, instrument repairs, and recital hall facilities.

The Bureau conducted a routine comprehensive audit to determine Petitioner’s compliance with Idaho sales tax and use tax laws. The Bureau reviewed Petitioner’s sales journal and Instrument Lease-To-Own Agreements (Agreements) for the entire audit period and held non-taxed sales of tangible personal property (with no exemption documentation) taxable. These non-taxed sales included: bank fees tied to long-term rental contracts subject to \$9,149 in sales tax, mandatory maintenance fees and sales of merchandise subject to \$2,653 in sales tax, and recital hall rentals subject to \$1,016 in sales tax. Petitioner did not protest the Bureau’s findings concerning the mandatory maintenance fees, sales of merchandise, and recital hall rentals.

The Bureau then reviewed Petitioner's purchase transactions for the entire audit period and held non-taxed purchases taxable. As a result, the Bureau determined the use tax liability was \$193. Petitioner did not protest the use tax findings.

Petitioner's Protest

Petitioner contends the majority of items held taxable in the non-taxed sales portion of the audit are finance charges related to the rental of band and orchestra instruments, and claims these charges are specifically exempt from the sales price according to section 63-3613(b)6, Idaho Code.

Petitioner also contends the Commission is attempting to charge sales tax on sub-contractor labor. The Bureau reviewed the sub-contractor labor but found no adjustments were necessary. Therefore, this issue is not addressed further.

Relevant Tax Code and Analysis

Idaho sales tax is imposed on retail sales of tangible personal property, unless an exemption applies, section 63-3619, Idaho Code. An exemption exists for finance charges provided that such charges are not used as a means of avoiding the tax imposed on the actual sales price of the tangible personal property, section 63-3613(b)6, Idaho Code.

During the audit process, the Bureau found the Agreements between Petitioner and the lessees showed unidentifiable charges which increased the monthly lease payment amounts. Petitioner explained to the Bureau that it used these charges to recover the cost associated with the automatic payment system. Therefore, the Bureau labeled these charges "bank fees tied to long-term rental contracts" and held them taxable as an increase in the sales price. The term sales price means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction for the cost of materials used, labor or service cost, losses, or any other expense, section 63-3613(a)2, Idaho Code.

Petitioner protested the Bureau's findings claiming the charges were actually finance charges related to instrument rentals. However, the Court has narrowly interpreted section 63-3613(b)6, Idaho Code to specifically exempt charges related to the financial industry. *See Chandler's-Boise LLC vs Idaho State Tax Commission (2017)162 Idaho 447, 398 P.3d 180.* Therefore, the Commission requested verification at the informal hearing showing Petitioner was truly acting as a lender when renting instruments. Petitioner claimed it provided capital for all of the instrument rentals and claimed this was demonstrated through the Agreements between itself and lessees in which a 1.5% interest charge is referenced. The Commission reviewed the Agreements in the case file during the hearing and explained to Petitioner that the Agreements did not reference any interest charges for lending purposes. Petitioner acknowledged the reference must have been removed when its Attorney revised the Agreements. Consequently, Petitioner mentioned it also provided invoices to lessees referencing these interest charges. The Commission requested the Agreements and corresponding invoices.

Petitioner provided one complete Agreement and the matching invoice along with eight partial Agreements and their corresponding invoices. After reviewing all of these documents, the Commission was unable to find anything proving Petitioner was a lender. Since the Agreements in the Commission's possession do not reference interest charges associated with the financial industry and no additional information has been provided to support Petitioner's claim, the Commission finds the charges were not exempt, and Petitioner is only increasing the sales price as defined in section 63-3613(a)2, Idaho Code. Therefore, the Commission finds the Bureau correctly held these charges taxable.

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."

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 upholds the Notice.

Absent information to the contrary, the Commission finds the Notice prepared by the Bureau to be an accurate representation of Petitioner's sales tax and use tax liability for the period November 1, 2013, through October 31, 2016.

The Bureau added interest to the sales tax and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per sections 63-3045 and 3046, Idaho Code, and has updated interest accordingly. Interest is calculated through May 31, 2019 and will continue to accrue at the rate set forth in section 63-3045(6), Idaho Code until paid. No penalty was assessed.

THEREFORE, the Notice, dated May 4, 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 and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$13,011	\$1,976	\$14,987

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:

[Redacted]

Receipt No.
