

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 13676
[Redacted]DBA [Redacted],)	
)	DECISION
Petitioner.)	
)	
)	
)	

On March 15, 1999, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination (NOD) to [Redacted] (taxpayer) d.b.a. [Redacted], proposing sales and use taxes, penalty and interest for the period January 1, 1991 through December 31, 1997 in the total amount of \$67,367.

On May 13, 1999, a timely protest and petition for redetermination was filed by the taxpayer's certified public accountant (CPA). A telephone informal hearing was requested by the CPA and held on July 20, 2000. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the deficiency determination.

The taxpayer owned and operated [Redacted], an Idaho business, but never established a sales or withholding permit for this business and failed to file his 1991 through 1997 Idaho individual income tax returns. The taxpayer was issued Notices of Deficiency Determination for the tax years 1991 through 1997 for his Idaho individual income tax returns. In response to the income tax NOD, the taxpayer filed actual returns which included Schedule C information showing gross receipts for [Redacted] for all years.

The Commission's Tax Enforcement Specialist (specialist) sent an inquiry letter to the taxpayer at his [Redacted], Utah address on January 11, 1999. In this letter the specialist stated:

We are reviewing the need for a sales, use, and/or withholding permit for your company, as we are unable to locate a permit under the business name listed above. To assist in this review, the following information is requested . . .

The “business name listed above” is referring to the taxpayer d.b.a. [Redacted]. The taxpayer did not respond to the specialist’s inquiry letter.

Idaho Code Section 63-3635 of the Sales Tax Act stated:

Collection and enforcement. – The collection and enforcement procedures provided by the Idaho Income Tax Act, sections 63-3030A, 63-3038, 63-3039, 63-3040, **63-3042**, 63-3043, 63-3044, 63-3045B, 63-3047, 63-3048, 63-3049, 63-3050 through 63-3064, 63-3065A, 63-3071 and 63-3074, Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this act and collection of any amounts due under this act, and said sections shall, for this purpose, be considered part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this act, be described as sales and use tax liens and proceedings. (Emphasis added)

The Commission had the authority to request information from the taxpayer under Idaho Code Section 63-3042, which stated in pertinent part:

Examination of books and witnesses. – For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax payable under this act or the liability at law or in equity of any person in respect to any tax provided in this act or collecting any such liability, the state tax commission or its duly authorized deputy is authorized-

(a) To examine any books, papers, records, or other data which may be relevant or material to such inquiry; . . .

An NOD was issued on March 15, 1999 to the taxpayer based on 5% of the gross sales as reported on the taxpayer’s Schedule C of his federal income tax returns.

A protest letter was received from the taxpayer on May 14, 1999 and stated:

In answer to your letter, we applied several times for a tax number and never received one. Our accountant, [Redacted], requested a number on two different occasions without success. We then tried to obtain one on our own on at least one occasion with the same results.

As a result, we were always forced to pay sales tax on the purchase of our supplies because we could not produce a sales tax number for our

suppliers.

Most of our sales were for wholesale and we would not be required to collect sales tax on these anyway. Therefor, we don't feel we owe the tax claimed in the letter.

The letter the taxpayer referred to in his protest letter is his NOD from the Commission for sales/use taxes.

The "tax number" referred to by the taxpayer in his protest letter, is accurately a seller's permit, which one obtains by filling out an application (currently Forms IBR-1 or IBR-2) and sending or delivering the completed form to the Commission. The Commission routinely issues permits to persons who state that they will be making retail sales, and it is unusual for the Commission to not issue a permit, unless the application form was filled out incorrectly. If the application was filled out incorrectly, the Commission would have called the applicant for the correct information or returned the application with notification to the applicant of the error that needed to be corrected, such as, no signature provided. Moreover, the Commission has no record of receiving any application or communications from Mr. [Redacted] or Mr. [Redacted].

In the CPA's protest letter for the taxpayer dated May 10, 1999, he stated:

In regards to [Redacted] dba [Redacted] EIN [Redacted]. We wish to proyest [sic] the dtermination [sic] on the Notice of Deficiency dated March 15, 1999 for tax periods of 1991 through 1997. We do not agree with the determination and would like a hearing to resolve the matter.

On May 18, 1999, the specialist sent a letter to the taxpayer informing him that the protest letter dated received May 14, 1999 was a timely protest of the NOD dated March 15, 1999. The specialist advised the taxpayer that to be able to discuss any details of the case with his CPA, the Commission would need a Power of Attorney (POA) form. The specialist also asked the taxpayer if he could provide a schedule of his taxable and nontaxable sales. The taxpayer did not provide either.

On June 23, 1999, the specialist forwarded the file to the Commission's Legal/Tax Policy

Division.

On July 1, 1999, the Tax Policy Specialist sent the taxpayer's CPA a hearing rights letter to inform the CPA of his client's alternatives for redetermining a protested NOD. A request was made to the CPA to have his client execute the enclosed Power of Attorney form. A follow-up letter to the hearing rights letter was sent on August 6, 1999 to the CPA. The CPA did not respond to either hearing rights letters.

On April 5, 2000, the Tax Policy Specialist sent a letter to the CPA, which stated:

For the past ten months, I have been requesting and waiting for an Idaho Power-of-Attorney (POA) that appoints you as the attorney-in-fact for [Redacted] d.b.a. [Redacted]. As of the date of this letter, I have not received a POA from your client. I have enclosed an Idaho POA form with this letter.

I will give Mr. [Redacted] until April 20, 2000 to submit an Idaho POA to my attention. If I do not receive a POA from Mr. [Redacted] by that date, the Commission will issue its decision based on the material in the Commission's file.

On April 16, 2000, the Tax Policy Specialist received a POA signed by the taxpayer appointing his CPA as his "attorney-in-fact."

A telephone informal hearing was scheduled for July 20, 2000. The CPA was to initiate the call. The Commission staff did not receive a call, so the Tax Policy Specialist called the CPA. While on the line, the CPA initiated a conference call with the taxpayer to set up the hearing with the Tax Policy Specialist. The taxpayer agreed to have the Commission's staff audit three months of his sales and purchase invoice records. The information from the audit would be used to estimate the taxpayer's sales tax liability.

The Tax Policy Specialist contacted the CPA by telephone on September 8, 2000 to discuss this case. After hearing the results of the Commission's audit of the taxpayer's records, the CPA claimed the reduced NOD would be a financial hardship for the taxpayer and should be

considered when looking at compromising the amount of the NOD in this case. The Tax Policy Specialist sent the CPA a “Financial Statement” form to be completed by the taxpayer. At this time, the taxpayer’s financial information has not been provided to the Commission.

The Tax Policy Specialist sent a package with a letter dated September 15, 2000 and a copy of the audit work papers to the CPA and the taxpayer via certified mail. The CPA signed for his package on September 20, 2000. The taxpayer’s package was returned to the Commission because of an incorrect address provided by the CPA. The taxpayer’s package was resent on October 6, 2000, to the correct address. The taxpayer signed for his package but did not put the date of delivery on the return receipt card. The Commission received the taxpayer’s return receipt card on October 16, 2000. The letter in the package stated:

The State Tax Commission has audited the sales and purchases for [Redacted] for the three test months of February 1992, June 1994, and October 1996.

The auditors looked at all nontaxed sales for the test periods to determine which sales should be held as taxable. The error rate was 95.372%. All nontaxed sales were scheduled for the test periods. The error rate was multiplied times the gross receipts shown on the taxpayers Schedule C for [Redacted] to come up with the taxable sales for each year.

The auditor also reviewed the purchases in the test periods and scheduled all purchases where the seller charged sales tax. A tape of all purchases was run to come up with total purchases for the test periods. The error rate was 66.431%. The error rate was multiplied times the cost of goods sold shown on the taxpayers Schedule C for [Redacted] to come up with the tax-paid purchases for each year.

The taxable sales were reduced by the amount of tax-paid purchases for year. The results show tax due of \$22, 359 with a 25% nonfiler penalty of \$5,589 and interest of \$10,614 for a grand total of \$38,652. Please review the nontaxed sales that were held as taxable to see if any of those items were purchased by your customer for resale.

I have enclosed a Financial Statement form to be completed

by [Redacted]. The Idaho State Tax Commission must have the completed Financial Statement to determine whether financial hardship may be used as a basis for reducing the amount of this sales tax deficiency.

The auditor did identify some sales as sales for resale because the sales were made to other printing companies.

The taxpayer claimed in his protest letter cited earlier in this decision that most of his sales were for wholesale and he would not be required to collect sales tax on these anyway.

Idaho Code Section 63-3622 (1997) stated in pertinent part:

Exemptions – Exemption and resale certificates – Penalties.– (a)

To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate.

(b) An exemption certificate shall show the purchaser's name, business name and address (if any), address, and signature and the reason for and nature of the claimed exemption.

(c) A resale certificate shall be signed by and bear the name and address of the purchaser or his agent, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold or rented by the purchaser in the regular course of business. A resale certificate relieves the seller from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds a permit provided for in this section, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax.

(d) A seller may accept an exemption or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the

privilege of the exemption. Other than as provided elsewhere in this section, when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. A seller need not accept an exemption or resale certificate that is not readable, legible or copyable.

(e) Any person who gives an exemption or resale certificate with the intention of evading payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(f) An exemption or resale certificate shall be substantially in such form as the state tax commission may prescribe. The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale. Unless the purchaser has an exemption or resale certificate on file with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally requires on sales invoices, purchase orders, or other sales documentation.

(g) It shall be presumed that sales made to a person who has completed an exemption or resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.

On January 5, 2001, the taxpayer faxed to the Commission a stipulation signed by him to allow the Commission to hold in abeyance its final decision in this matter until March 31, 2001 pursuant to Idaho Code Section 63-3046B(4). The taxpayer requested the extension of time to try and obtain resale certificates from some of his customers.

The taxpayer has been given an opportunity to provide resale certificates for his customers he claimed purchased for resale in the three test months. The taxpayer has not provided any resale certificates for sales made during the three test months.

The taxpayer was required to collect sales tax from his customers for printing jobs because “sale” means any transfer of title of tangible personal property for consideration. Idaho Code Section 63-3612(1). The taxpayer was also required to collect the sales tax when he printed or imprinted on his customer’s property because “sale” includes printing or imprinting of tangible personal property for consideration for consumers who furnish the tangible personal property used in printing or imprinting. Idaho Code Section 63-3612(2)(a).

Each sale in the preceding paragraph is a “sale at retail.” Idaho Code Section 63-3609 defines a “sale at retail” as a sale for any purpose other than resale in the regular course of business or lease or rental of property in the regular course of business where such rental or lease is taxable under section 63-3612(h), Idaho Code.

Idaho Code Section 63-3619 stated:

Imposition and rate of the sales tax. – An excise tax is hereby imposed upon each sale at retail at the rate of five per cent (5%) of the sales price of all retail sales subject to taxation under this chapter and such amount shall be computed monthly on all sales at retail within the preceding month.

The Commission reduced the amount of the NOD based on a sample audit of the taxpayer’s records. The taxpayer, as a retailer, has not met the burden of proof that some of his customers purchased for resale because he has not provided resale certificates for these customers.

THEREFORE, the Notice of Deficiency Determination dated March 15, 1999, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following taxes, penalty, and interest:

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
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1/1/91 - 12/31/97 \$22,359 \$5,589 \$11,957 \$39,905

Interest is computed through July 7, 2001.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2001, 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]DBA [REDACTED]
[REDACTED]
[REDACTED]

Receipt No.: [Redacted]

ADMINISTRATIVE ASSISTANT 1