

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 14449 & 14450
[REDACTED],)	
)	DECISION
Petitioner)	
_____)	

On September 17, 1999, the staff of the Construction Audit Group of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing sales/use taxes, withholding tax, penalties, and interest for the period January 1, 1994 through December 31, 1994 in the total amount of \$5,769.

On November 17, 1999, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing and has not provided any additional documentation for consideration. The Tax Commission, having reviewed the file, hereby issues its decision.

The Construction Audit Group (Group) received information from the Idaho Department of Labor that the taxpayer paid Idaho wages during 1994. The Group researched the Tax Commission's records and found the taxpayer did have a withholding tax permit but did not file withholding tax returns. The Group was also interested in whether the taxpayer paid or remitted the appropriate sales/use tax on the materials, equipment and supplies he consumed as a contractor in Idaho.

The Group sent the taxpayer a letter asking him to list all contracts performed in Idaho during a specific period. The Group also asked for a list of the taxpayer's suppliers and subcontractors used for the Idaho contracts. The taxpayer did not respond to the Group's inquiries.

The Group reviewed the information it gathered and determined the taxpayer should have filed both withholding tax returns and sales/use tax returns. The Group estimated the amount of tax due for both withholding and sales/use taxes and sent the taxpayer a Notice of Deficiency Determination. The taxpayer protested the Group's determination stating he believed no taxes were owed.

The Tax Commission sent the taxpayer a letter setting forth the methods available for redetermining the Notice of Deficiency Determination. The taxpayer did not respond. The Tax Commission called the taxpayer and sent him a follow-up letter asking him to provide specific information so that a redetermination could be made. The taxpayer contacted the Tax Commission a month later in reference to the follow-up letter sent to him. The taxpayer stated most of the purchases he made for the Idaho contract were made from a supplier in [Redacted], Idaho. He stated sales tax was paid on the materials when they were purchased. The taxpayer did not have any receipts to document his statements and he said his purchases were too numerous to get copies from his supplier.

The taxpayer stated part of the contract required the purchase of roofing materials, which he purchased in [Redacted], Washington. The taxpayer believed he could get copies of the [Redacted] receipts. The Tax Commission asked the taxpayer to provide copies of the [Redacted] receipts and to provide a statement from his [Redacted] supplier that sales tax was charged and paid on purchases by the taxpayer.

Several months passed without any further contact with the taxpayer. The Tax Commission sent the taxpayer another letter stating what the taxpayer was to provide the Tax Commission to continue his appeal. The taxpayer did not respond to the Tax Commission's letter. Therefore, the Tax Commission decided the matter based on the information presently available.

It was apparent from the information available that the taxpayer did do contract work in Idaho which improved real property. By the taxpayer's own statements, the taxpayer purchased materials used to improve real property. Therefore, as a contractor, the taxpayer is considered the consumer of the materials used in the contract (Idaho Code Section 63-3609) and was required to pay sales or use tax on his purchases of materials and supplies (IDAPA 35.02.01 Idaho Sales and Use Tax Administrative Rules 012.06).

The Group used a formula to estimate the amount of total materials purchased by the taxpayer. Since the taxpayer has provided nothing other than what is considered self-serving statements, the Tax Commission found the estimate derived by the Group reasonable. Therefore, the Tax Commission upheld the Group's determination of sales/use tax.

In its determination of the withholding tax, the Group used the information obtained from the Department of Labor and applied a formula to determine the amount of withholding the taxpayer should have remitted. The taxpayer provided even less information regarding his withholding tax. Since the taxpayer applied for and received a withholding tax permit, one can assume that the taxpayer knew he was responsible for making withholding on his employees' wages. Therefore, the Tax Commission found the Group's use of an estimated withholding tax appropriate.

The Group added interest and penalty to the taxpayer's tax deficiency in accordance with Idaho Code Sections 63-3632 and 63-3634. The Tax Commission reviewed these additions and found them to be appropriate.

WHEREFORE, the Notice of Deficiency Determination dated September 17, 1999 for the sales/use tax and withholding tax deficiencies is hereby APPROVED, AFFIRMED, AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty and interest for the period ending December 31, 1994:

<u>TAX TYPE</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
Sales/Use	\$2,425	\$ 606	\$1,200	\$4,231
Withholding	1,108	277	549	<u>1,934</u>
TOTAL DUE				<u>\$6,165</u>

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 included 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] Receipt No. [Redacted]
[REDACTED][REDACTED]

ADMINISTRATIVE ASSISTANT 1