

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 14687, 14688 & 14689
[REDACTED],)
) DECISION
)
Petitioner.)
_____)

On December 28, 1999, the staff of the Construction Audit Group of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, sales/use tax, withholding tax, penalty, and interest for the taxable period 1995 in the total amount of \$1,815.

On February 15, 2000, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing and has only submitted a few additional statements for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Construction Audit Group (Group) received information from a general contractor that the taxpayer performed subcontract work in Idaho for the general contractor in the taxable year 1995. The Group researched the Tax Commission's records and found the taxpayer did not file the proper tax filings for doing business in Idaho. The Group sent the taxpayer a letter asking about its filing requirements with the state of Idaho. The taxpayer did not respond.

The Group determined the taxpayer needed to file an Idaho income tax return, a sales/use tax return, and report and file Idaho withholding taxes. The Group used the information from the general contractor and estimated the taxes the taxpayer should have reported. The Group sent the taxpayer a Notice of Deficiency Determination for each of the taxes owed.

The taxpayer contacted the Group after receiving the Notices of Deficiency Determination. The taxpayer stated it had only one job in Idaho. The job consisted of putting

together a canopy for [Redacted]. The taxpayer stated the general contractor provided all the materials and supplies. It just supplied the labor.

The Group asked the taxpayer for some specific information to determine the taxpayer's liability more accurately. The taxpayer responded by letter stating that its profit on the Idaho job was a loss of \$170. The taxpayer provided little more information than that.

The Group treated the taxpayer's letter as a letter of protest and sent the taxpayer's case on for administrative review. The Tax Commission sent the taxpayer a letter setting forth two methods for redetermining a protested Notice of Deficiency Determination. The taxpayer responded by asking the Tax Commission to consider its statements in making the redetermination.

The taxpayer stated that for the job in Idaho it did not purchase or lease any equipment, materials, or supplies. The taxpayer stated it was a family-owned business and employed only members of the family. The Tax Commission asked the taxpayer for additional information, but the taxpayer failed to provide anything further. Therefore, the Tax Commission decided this matter based upon the information currently available.

INCOME TAX ISSUE

The taxpayer is an [Redacted] partnership that did work in Idaho during 1995. The only specific information the Tax Commission had for the Idaho job was the subcontract price the general contractor provided to the Construction Audit Group. The Tax Commission did obtain information from the [Redacted], which showed the taxpayer had other sources of income in addition to the Idaho job. However, the information was not sufficient enough to determine the taxpayer's multi-state activities.

The taxpayer stated the Idaho job generated a loss. However, the taxpayer provided no documentation or other information to support that statement. The taxpayer stated its total

income from the Idaho job was \$1,800. However, the information the general contractor provided stated the subcontract for the taxpayer was \$8,734.

Absent additional information from the taxpayer, the Tax Commission found the Group correctly determined the taxpayer's requirement to file an Idaho income tax return. Furthermore, the Tax Commission found the Group's estimate of the taxpayer's income appropriate under the circumstances. Additionally, the Tax Commission found the Group properly asserted the tax against the taxpayer per Idaho Code section 63-3022L because the taxpayer's partners did not file Idaho income tax returns.

The Group added interest and penalty to the taxpayer's income tax deficiency as provided for in Idaho Code sections 63-3045 and 63-3046. The Tax Commission reviewed these additions and found them to be appropriate.

SALES/USE TAX ISSUE

The Group asserted a sales/use tax deficiency on the taxpayer for the materials and supplies the taxpayer consumed for the Idaho project. The taxpayer protested the tax stating all the materials, supplies and equipment were provided by the general contractor. The taxpayer stated all it provided was the labor for the project.

The Idaho Sales/Use Tax Code specifies that a contractor is the consumer of goods, materials and supplies for construction projects in Idaho. (Idaho Code section 63-3609.) Therefore, absent documentation showing the taxpayer paid sales tax on the purchase of the material and supplies used for the Idaho project, the Group was correct in asserting an estimated sales/use tax deficiency.

However, the Tax Commission found the taxpayer's statement that the general contractor provided all the materials and supplies, supported by the statements from the general contractor

and documents provided by the general contractor. Therefore, the Tax Commission finds the taxpayer had no sales/use tax liability on the Idaho project.

WITHHOLDING TAX ISSUE

The Group asserted a withholding tax deficiency on the taxpayer for the estimated wages the taxpayer paid its employees on the Idaho project. The taxpayer protested the Group's determination stating that it was a family run business that employed only the family.

[Redacted]. Therefore, if the taxpayer had employees, there is a very good chance the taxpayer was required to withhold for Idaho purposes. However, if the taxpayer's employees earned less than \$1,000 in the calendar year 1995 for services performed in Idaho, the taxpayer was not required to withhold from the employees' wages. (IDAPA 35.01.01.871.01.b Income Tax Administrative Rules.)

The taxpayer's statement to the Tax Commission regarding employees was, "only one family member works for me." This statement was made by [Redacted], presumably the controlling partner. From this statement, the Tax Commission deduced that the taxpayer had two individuals working on the Idaho project, the partner [Redacted] and one other family member.

Since the taxpayer stated the Idaho contract was for services only, it stands to reason that the majority of the contract amount was paid out in wages. Therefore, absent payroll records or other documentation from the taxpayer, the Tax Commission agreed with the Group's determination that the taxpayer's employees received wages in excess of \$1,000 while working in Idaho. Therefore, the Tax Commission upholds the Group's estimate of wages and the amount of withholdings required on those wages.

The Group added interest and penalty to the amount of estimated withholdings as provided for in Idaho Code sections 63-3045 and 63-3046. The Tax Commission reviewed the addition of the interest and penalty and found them to be appropriate.

WHEREFORE, the Notices of Deficiency Determination for the income tax deficiency and the withholding tax deficiency dated December 28, 1999, are hereby APPROVED, AFFIRMED, AND MADE FINAL.

WHEREFORE, the Notice of Deficiency Determination for the sales/use tax deficiency dated December 28, 1999, is hereby CANCELLED.

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

<u>TAX TYPE</u>	<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
Income	1995	\$709	\$177	\$293	\$1,179
Withholding	1995	143	36	75	254
Sales/Use	1995	0	0	0	<u>0</u>
				TOTAL DUE	<u>\$1,433</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]

ADMINISTRATIVE ASSISTANT 1