

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination of)	DOCKET NO. 15032
)	
[REDACTED][REDACTED],)	DECISION
Re: [REDACTED],)	
)	
Petitioner.)	
)	
)	
)	

On July 24, 2000, [Redacted] (hereinafter petitioner), filed a refund claim of \$8,465.07 with the Idaho State Tax Commission for sales and withholding taxes it paid to obtain a liquor license issued to [Redacted], (hereinafter taxpayer). The Commission conducted a hearing with the petitioner pursuant to Idaho Code § 63-3045(b)(2) on January 3, 2001. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

The taxpayer operated a business in [Redacted]. In conjunction with the business, the Department of Law Enforcement issued the taxpayer a liquor license. The taxpayer did not pay over to the State Tax Commission sales and withholding taxes that accrued as a result of the operation of the facility. Accordingly, the Commission assessed the taxes against the taxpayer and notified the Director of the Department of Law Enforcement and the taxpayer of the assessment. Upon receipt of this notice, the Director, pursuant to Idaho Code § 23-950, could not authorize a renewal, transfer, assignment, lease or sale of the taxpayer's liquor license.

In the meantime, the taxpayer had obtained a loan from the petitioner. The loan was secured by a deed of trust on the taxpayer's business property. The taxpayer defaulted and the petitioner foreclosed. The petitioner desired to obtain the liquor license associated with the premises. However, because section 23-950 prohibited the transfer of the license, the petitioner

was required to clear the tax debt before it could obtain the license. The petitioner then paid the entire sales and withholding tax debt, along with penalty and interest to the Commission.

The petitioner then contacted the Department of Law Enforcement for the purpose of acquiring the license. At that time the petitioner was informed that the liquor license was a special use (resort) license and the time had expired for transferring the license. The petitioner had several more conversations with representatives of the Department about obtaining the license through some “grandfather” provision. However, these discussions were unsuccessful, and the petitioner was unable to obtain the license.

The petitioner then filed a claim for refund in the amount of \$8,465.07 with the Commission. This amount represents the amount the petitioner paid to remove the restriction on transfer. The petitioner has not cited any legal authority supporting its claim that the refund should be granted. Essentially, the petitioner contends that the taxes were paid by mistake and is now asking the Commission to rectify the mistake. If the petitioner had known it had no legal right to obtain the license, it would not have paid the taxes.

As noted, the petitioner does not cite to any statutory authority that authorizes the Commission to refund the money. The Commission, likewise, cannot locate any such statute. The petitioner acted under the mistaken belief that it would have the right to obtain the license when it paid off the taxpayer’s tax debt. Neither the Commission nor any agent of the State was responsible for this mistaken belief. Thus there can be argument that the Commission should be estopped from asserting that the payment should not be returned. At the time of payment there was a valid assessed tax. The Commission received payment and applied the payment to the debt as instructed by the petitioner. The right to a refund is limited to those situations where there has been an overpayment. Idaho Code § 63-3072. Here, there has been no overpayment as contemplated by the refund statute. The taxpayer’s debt was paid in full, though it was paid by

the petitioner. There is no argument that the taxpayer's liability was overstated. Thus, even though the petitioner had no legal obligation to pay the tax, it chose to do so. Accordingly, the Commission does not believe it has any legal basis to pay the refund claim.

Additionally, there is no evidence that any agent of the State represented to the petitioner that the license would be transferred upon payment of the tax debt. It appears that the petitioner just simply misinterpreted Idaho law.

IT IS ORDERED and THIS DOES ORDER that the petitioner's claim of refund for taxes paid on behalf of taxpayer is DENIED.

An explanation of the petitioner'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]Receipt No. [Redacted]

[REDACTED][Redacted] [REDACTED]

ADMINISTRATIVE ASSISTANT 1