

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 14705
[Redacted])	
)	DECISION
Petitioner.)	
_____)	

On February 10, 2000, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted]. (taxpayer), asserting use tax, penalty, and interest in the amount of \$42,331 for purchase and use of an [Redacted].

[Redacted], attorney at law, filed a timely petition for redetermination on behalf of the taxpayer by letter dated April 11, 2000. [Redacted] asserted an equal protection defense under both the federal and state constitutions. A letter setting forth hearing alternatives was sent to [Redacted] on May 9, 2000. [Redacted] responded on May 24, 2000, with a letter setting forth available dates. Because this issue had previously been litigated in district court, and because the State Tax Commission is precluded from entertaining constitutional defenses (see, *Wanke v. Ziebarth Constr. Co.*, 69 Id 64 [1949]) there was discussion with [Redacted] as to whether the taxpayer wished to undertake the expense of an informal conference in Boise. A letter to this effect was sent to [Redacted] on July 19, 2000.

On September 13, 2000, not having heard from [Redacted], a letter was sent requesting available dates for an informal conference. On September 18, 2000, [Redacted] responded that he would be submitting the matter to the Commission in writing. On September 27, 2000, the Commission responded with a request for written argument and any exhibits the taxpayer deemed necessary. On November 28, 2000, the Commission sent a follow-up letter making the same request. On March 1, 2001, the Commission sent another letter asking whether it should

simply issue a decision. In the meantime, [Redacted] had been appointed to the bench. On May 9, 2001, the Commission corresponded directly with the taxpayer asking whether new counsel had been retained and, if not, how the taxpayer wished to proceed. A telephone call from the taxpayer indicated he was seeking new counsel. On July 18, 2001, the Commission sent another letter to the taxpayer requesting the name of new counsel. On September 26, 2001, the Commission received a letter from [Redacted] indicating [Redacted] had retained him and that he was in the process of getting the case file. On March 5, 2002, the Commission sent another letter indicating that a decision would issue on the facts in the file unless additional written material was submitted or a date set for an informal conference. There has been no response.

The Commission hereby upholds the February 10, 2000, Notice of Deficiency Determination in its entirety. See, *Parsons v. Idaho State Tax Com'n*, 110 Idaho 572 (Ct. App. 1986). (The taxpayer has the burden to show that a deficiency determination is incorrect.)

WHEREFORE, the Notice of Deficiency Determination dated February 10, 2000, is hereby APPROVED, AFFIRMED, and MADE FINAL.

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

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$37,700	\$1,885	\$9,489	\$49,074

Interest is calculated through August 20, 2002, and will continue to accrue at the statutory rate until paid.

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 _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, 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