

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 15194
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On September 15, 2000, the Sales Tax Audit Section of the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing additional sales and use tax, penalty and interest for the period of January 1, 1996 through December 31, 1998 in the total amount of \$36,843.

The taxpayer’s C.P.A. filed a timely protest and petition for redetermination, raising several factual issues. This letter also stated that the “taxpayer also requests that they be given the opportunity to discuss situations where they actually overpaid tax on numerous jobs during the audit period. Taxpayer is aware of the statutes involved, however, they believe that these issues need to at least be considered in the overall audit results.”

As a result of this letter and of additional documentation provided by the taxpayer, on February 1, 2001, the auditor recalculated the total tax, penalty and interest due to be \$34,360. On April 23, 2001, the Commission sent a letter to the taxpayer’s C.P.A. informing him of the taxpayer’s right to an informal hearing before the Commission and describing the available options for such a hearing. These options included both appearing in person or conducting the hearing by telephone as well as submitting additional statements or documents for the Commission’s consideration.

On May 21, 2001, the taxpayer’s C.P.A. responded with a letter that stated, “[T]here is no disagreement with the amount of the original assessment.” Enclosed with the letter were copies of invoices on which the taxpayer had collected sales tax from its customers in error. The letter

stated that, “[i]t is the intent of [Redacted] that the over payments [sic] could be used as a partial offset of the balance due.” The C.P.A. did not specifically request an informal hearing before the Commission but did ask for a meeting to discuss these issues.

On June 18, 2001, the Tax Commission sent a letter to the C.P.A. stating that refunds of sales tax collected in error could only be paid to the customers from whom the tax was collected and could not be used to offset a use tax liability. The letter also asked for clarification as to whether the taxpayer sought a meeting with a tax policy specialist or an informal hearing with the Commission. On August 21, 2001, the Commission sent a second letter to the C.P.A. again asking if he would like to schedule a hearing or provide some other documentation. This letter included a request that the taxpayer respond by September 10, 2001. Having received no response, the Tax Commission hereby renders its decision.

Idaho Code § 63-3626 states that, “[i]f the tax commission determines that any amount due under this chapter has been paid more than once or has been erroneously or illegally collected or computed, the tax commission shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount then due and payable to the tax commission from that person and any balance refunded to the person by whom it was paid or to his successors, . . .” In this case, the persons who paid the tax erroneously were the customers of the taxpayer and amounts refunded must be paid to them. Allowing the taxpayer to offset its use tax deficiency by applying sales tax collected from its customers would be inequitable to the customers who actually paid the tax. To the extent such refunds are not barred by Idaho Code § 63-3626, the refunds can be paid directly to the customers.

WHEREFORE, the Notice of Deficiency Determination dated September 15, 2000, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest (calculated through March 15, 2002):

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$26,349	\$1,317	\$8,661	\$36,327

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

An explanation of the taxpayer's rights 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]

\_\_\_\_\_  
ADMINISTRATIVE ASSISTANT 1