

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15324
[Redacted],)	
)	DECISION
)	
Petitioner.)	
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On November 14, 2000, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted], proposing sales and use tax, penalty and interest for the periods ending December 31, 1998 and December 31, 1999, in the total amount of \$2,345.

On January 12, 2001, a timely protest and petition for redetermination was filed by [Redacted] certified public accountant, [Redacted]). An informal hearing was not requested by [Redacted]. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the deficiency determination.

[Redacted] is a [Redacted] Subchapter S corporation that sold auto-detailing products in the state of Idaho during the years 1998 and 1999. [Redacted] filed an Idaho Subchapter S corporation return for 1998. [Redacted] Idaho customers consisted of new and used automobile retailers, automobile rental companies, and a few repair shops.

On June 3, 1999, an initial inquiry letter and questionnaire were sent to [Redacted] requesting information regarding its business activities in the state of Idaho.

On August 2, 1999, the completed Idaho Business Activity Questionnaire was received from [Redacted]. The questionnaire indicated that [Redacted] distributed and sold automotive reconditioning products and equipment. [Redacted] employees began selling and distributing these products in Idaho in 1998. [Redacted] employees delivered products, collected on delinquent

accounts, made after hours replacements, picked up returned merchandise, made on the spot sales, and trained customers in the use of their products while at the customer's locations in Idaho.

On September 21, 1999, a letter was sent to [Redacted] president, [Redacted], requesting additional information regarding [Redacted] business activities in the state of Idaho.

On November 3, 1999, [Redacted] returned the letter dated September 21, 1999. He indicated that [Redacted] did not make sales to retailers and all sales were to the end-user. Also, [Redacted] indicated that [Redacted] charged their Idaho customers sales tax on their purchases and needed the necessary forms and instructions in order to complete and submit final sales/use tax returns.

On November 29, 1999, a letter was sent to [Redacted] indicating that [Redacted] was required to collect and remit Idaho sales tax for sales made to its Idaho customers. An Idaho Business registration form and Idaho sales and use tax remittance forms for the tax years 1998 and 1999 were enclosed with the letter.

On February 3, 2000, [Redacted] submitted an Idaho sales/use tax return and the completed Idaho Business Registration form. The return indicated that [Redacted] had no taxable sales before January 1, 2000.

On March 15, 2000, the Commission's Tax Business Specialist (specialist) called [Redacted] and left a message to return his call.

On March 22, 2000, [Redacted] returned the specialist's call and stated that he thought the sales were exempt because the products become a part of the car.

An Idaho sellers permit for [Redacted] was applied for and received on March 27, 2000, after the TDB informed [Redacted] of its filing requirement.

On April 3, 2000, [Redacted] called and requested that the specialist contact [Redacted] accountant. The specialist indicated that the Commission's Power of Attorney (POA) form was required in order to discuss this case with the accountant. On April 3, 2000, the specialist faxed the POA form to [Redacted] who completed the POA form and returned it later that day.

On April 3, 2000, the specialist called [Redacted] accountant, [Redacted]. [Redacted] indicated that [Redacted] did not collect sales tax because the sales were exempt and sales tax was not charged when the products were sold to retailers. The specialist stated that [Redacted] sales did not qualify for an exemption because the sales were made to the end-user of the product. Therefore, [Redacted] was required to collect and remit Idaho sales tax. [Redacted] indicated that he would perform additional research and call the specialist back by the end of the week.

The required Idaho sales/use tax returns for the tax years 1998 and 1999 were not submitted by [Redacted]. Due to this lack of response, a NOD for sales tax was issued on November 14, 2000 for the years 1998 and 1999. The NOD was based on the Idaho sales reported on Form 42 filed with [Redacted] 1998 Idaho Subchapter S Corporation income tax return and an estimation of Idaho sales for 1999 because [Redacted] had not filed an income tax return for this period.

[Redacted] filed a letter of protest for [Redacted] dated January 12, 2001, requesting abatement of the tax, penalty, and interest asserted in the NOD.

On March 9, 2001, the specialist received a letter and additional information from [Redacted]. Included with this letter were account applications for the taxpayer's Idaho customers and Idaho sales tax returns for the years 1998 and 1999 with a reported tax of \$3.42 and \$22.54 respectively. [Redacted] also stated that the 1999 Idaho State and Federal income tax returns for [Redacted] were on extension until September 15, 2000 and were filed in a timely manner on August 1, 2000.

On April 8, 2001, the specialist forwarded the file to the Commission's Legal/Tax Policy Division.

On July 19, 2001, the Tax Policy Specialist (policy specialist) sent [Redacted] a hearing rights letter to inform him of [Redacted] alternatives for redetermining a protested NOD. A follow-up letter to the hearing rights letter was sent to [Redacted] on September 25, 2001.

[Redacted] references in several of his letters that [Redacted] applied for an Idaho sales permit when it first started in business. [Redacted] stated that Form IBR-1 requesting a sales permit was sent to the Department of Labor (DOL) in December 1998.

The policy specialist asked DOL to confirm that receipt of [Redacted] IBR-1. DOL was unable to find this employer's name or Federal Employer Identification Number (FEIN) in its databases. DOL does keep a file on nonemployers, but there was nothing there for this taxpayer/nonemployer.

In a letter dated October 4, 2001, [Redacted] stated that [Redacted] would like the opportunity to submit the required sales tax exemption forms to be included in its appeal. The following is a table of [Redacted] Idaho customers and Idaho Resale Exemption Certificates provided by [Redacted]

CUSTOMER NAME	LOCATION	IDAHO RESALE CERTIFICATE (ST101)	IDAHO SELLERS PERMIT ISSUED
[Redacted]	Pocatello, ID	No	No
[Redacted]	Twin Falls, ID	Yes	Yes
[Redacted]	Burley, ID	Yes	Yes – Issued 06/99
[Redacted]	Idaho Falls, ID	Yes	Yes
[Redacted]	Pocatello ID	Yes	Yes
[Redacted]	Preston, ID	Yes	Yes
[Redacted]	Pocatello, ID	Yes	Yes
[Redacted]	Idaho Falls, ID	Yes	Yes
[Redacted]		No	No

On March 14, 2002, the policy specialist sent a letter to [Redacted] in which he stated:

As per our telephone conversation on February 27, 2002, the Commission requests that your client, [Redacted], submit a record of its Idaho sales by customer for the tax years 1998 and 1999. The Commission will review your client's Idaho sales records for these periods and adjust the Notice of Deficiency Determination dated November 14, 2000 to reflect those sales not supported by an ST101. Please send the records requested above to my attention by May 15, 2002.

The policy specialist did not receive a response to the above request.

Idaho Code section 63-3635 (1998) of the Sales Tax Act stated:

Collection and enforcement. The collection and enforcement procedures provided by the Idaho Income Tax Act, sections 63-3030A, 63-3038, 63-3039, 63-3040, **63-3042**, 63-3043, 63-3044, 63-3045B, 63-3047, 63-3048, 63-3049, 63-3050 through 63-3064, 63-3065A, 63-3071 and 63-3074, Idaho Code, shall apply and be available to the state tax commission for enforcement of the

provisions of this act and collection of any amounts due under this act, and said sections shall, for this purpose, be considered part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this act, be described as sales and use tax liens and proceedings. (Emphasis added)

The Commission had the authority to request information from [Redacted] under Idaho Code section 63-3042 (1998), which stated in pertinent part:

Examination of books and witnesses. For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax payable under this act or the liability at law or in equity of any person in respect to any tax provided in this act or collecting any such liability, the state tax commission or its duly authorized deputy is authorized--

(a) To examine any books, papers, records, or other data which may be relevant or material to such inquiry; . . .

[Redacted] was required to collect sales tax from its customers because “sale” means any transfer of title of tangible personal property for consideration. Idaho Code section 63-3612(1). Each of the reconditioning products and equipment sold by [Redacted] in Idaho is presumed to be a “sale at retail.” Idaho Code section 63-3609 defines a “sale at retail” as a sale for any purpose

other than resale in the regular course of business or lease or rental of property in the regular course of business where such rental or lease is taxable under Idaho Code section 63-3612(h) .

Idaho Code section 63-3619 (1998) stated in pertinent part:

Imposition and rate of the sales tax. An excise tax is hereby imposed upon each sale at retail at the rate of five per cent (5%) of the sales price of all retail sales subject to taxation under this chapter and such amount shall be computed monthly on all sales at retail within the preceding month. . . .

Idaho Code section 63-3622 (1998) stated in pertinent part:

Exemptions -- Exemption and resale certificates -- Penalties. (a)

To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate.

(b) An exemption certificate shall show the purchaser's name, business name and address (if any), address, and signature and the reason for and nature of the claimed exemption.

(c) A resale certificate shall be signed by and bear the name and address of the purchaser or his agent, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold or rented by the purchaser in the regular course of business. A resale certificate relieves the seller from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds a permit provided for in this section, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax.

(d) A seller may accept an exemption or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. A seller need not accept an exemption or resale certificate that is not readable, legible or copyable.

(e) Any person who gives an exemption or resale certificate with the intention of evading payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and

punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(f) An exemption or resale certificate shall be substantially in such form as the state tax commission may prescribe. The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale. Unless the purchaser has an exemption or resale certificate on file with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally requires on sales invoices, purchase orders, or other sales documentation.

(g) It shall be presumed that sales made to a person who has completed an exemption or resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.

[Redacted] has been given an opportunity to provide Idaho resale certificates for its Idaho customers it claimed are purchasing its products for resale.

The statute imposing a penalty for failure to file can be found in Idaho Code section 63-3046(c) (1998) which states:

In the event the return required by this chapter is not filed, or in the event the return is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns.

The statute relating to filing and payment of sales and use taxes, Idaho Code section 63-3623 (1998) says in pertinent part:

Returns and payments. (a) The taxes imposed by this act are due and payable to the state tax commission monthly on or before the twentieth day of the succeeding month. . . .

(c) On or before the twentieth day of the month a return shall be filed with the state tax commission in such form as the state tax commission may prescribe.

(d) For the purpose of the sales tax, a return shall be filed by every seller. For the purposes of the use tax, a return shall be filed by

every retailer engaged in business in this state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his duly authorized agent. . . .

Thus, as a matter of law, the Sales Tax Act required that [Redacted] file monthly sales tax returns.

The Idaho Supreme Court, in hearing Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), addressed whether the taxpayer was required to pay interest. The Court said:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); *see generally* 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that “interest . . . shall be assessed” and “shall be collected.” This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

[Redacted], as a retailer, has not provided Idaho resale certificates, Form ST101, for all of its customers in Idaho. [Redacted] has not submitted a record of its Idaho sales by customer for the tax years 1998 and 1999 in order for the Commission to adjust the NOD to reflect those sales not supported by an Idaho resale certificate. Consequently, the Commission must uphold the NOD as issued.

THEREFORE, the Notice of Deficiency Determination dated November 14, 2000, is hereby APPROVED, AFFIRMED AND MADE FINAL.

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

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>PAYMENTS</u>	<u>TOTAL</u>
1/1/98 – 12/31/98	\$1,056.00	\$264.00	\$313.00	(\$3.42)	\$1,629.58
1/1/99 – 12/31/99	\$651.00	\$163.00	\$147.00	(\$22.54)	<u>\$ 938.46</u>
				TOTAL DUE	<u>\$2,568.04</u>

Interest is computed through December 31, 2002.

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]
