

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 16392
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On December 21, 2001, the Sales Tax Audit Section of the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted], doing business as [Redacted] (taxpayer), proposing additional sales and use tax, penalty, and interest for the period of May 1, 1994 through April 30, 2001, in the total amount of \$9,768.

On February 19, 2002, the taxpayer sent a letter and payment in the amount of \$6,710.00 to the Commission. The payment reflected the taxpayer's agreement with portions of the audit results. The letter stated the following objections to the audit:

1. The taxpayer stated that he was not notified of the existence of the sale or use tax.
2. The audit period was seven years.
3. The taxpayer stated he should not be liable for use tax on purchases of personal items purchased from mail-order retailers.
4. Tax was imposed on some purchases of tile for which freight charges could not be determined.
5. The taxpayer had to contract for some fabrication labor due to a labor shortage in Ketchum.

This letter was deemed to be a valid protest. On March 22, 2002, the Commission sent the taxpayer a hearing rights letter informing him of his appeal rights as provided for by Idaho Code § 63-3631. The taxpayer did not respond to this letter and has not requested a hearing

before the Tax Commission. Having reviewed the file, the Tax Commission hereby issues its decision.

### **1. Notification of the Idaho Use Tax.**

Idaho Code § 63-3619 imposes a tax, at the rate of 5% of the sales price, on all retail sales subject to taxation in the state of Idaho. Idaho Code § 63-3621 imposes a use tax, also at the rate of 5% of the sales price, on the storage, use, or other consumption of tangible personal property in Idaho. The use tax is a complementary tax to the sales tax. Every state that imposes a retail sales tax also imposes a use tax. The use tax is imposed when the purchaser or user of the property in Idaho has not paid sales tax on the purchase of the property. One purpose of the tax is to take away the incentive for purchasers to buy their goods from out-of-state retailers. The taxpayer states that he was not notified of the duty to pay use tax on his purchases. Notification of the existence of the tax is not a requirement imposed by Idaho Code § 63-3621 or any other statute. Clearly, if lack of knowledge was a valid defense, it would defeat the purpose of the use tax.

Nevertheless, the Tax Commission notes that the taxpayer has held an Idaho withholding tax account since 1989. In 1989, the Tax Commission began sending a newsletter, titled "Tax Update," to all businesses holding an active withholding account or seller's permit. Several of the "Tax Update" newsletters contained articles about the Idaho use tax. For example, the September 1990 issue of Tax Update contained an article titled "What Does 'Use Tax' Have To Do With You?" The March 1992 issue included a discussion of a Tax Commission regulation setting out three methods by which a taxpayer could report and pay Idaho use tax. The September 1993 issue included an article on how to go about getting a use tax account.

Finally, the entire March 1997 issue was devoted to the Idaho use tax and the Tax Commission's Managed Audit Program. Because the taxpayer had an active Idaho withholding account with the State Tax Commission, he was sent a copy of these "Tax Update" newsletters. Therefore, at a minimum he should have been aware of the existence of the Idaho use tax and of the possibility that he might need to obtain a use tax reporting number.

## **2. Statute of Limitation**

The taxpayer objected to the length of the audit period, which was seven years. Idaho Code § 63-3633(c) states: In the case of taxes owed by a person who has failed to file a return as provided in Idaho Code § 63-3623, the amount of taxes imposed in this chapter shall be assessed within *seven (7) years* of the time the return upon which the tax asserted to be due should have been filed. (Emphasis added.)

It is undisputed that the taxpayer did not file any sales or use tax returns during the audit period. For this reason, the seven year period is correct, as provided by the statute.

## **3. Personal Items Purchased from Mail Order Retailers.**

The taxpayer objected because many of the items scheduled by the auditor were purchases of personal items such as clothing and hunting equipment. As stated above, one of the purposes of the use tax is to remove the tax incentive for ordering goods from out-of-state retailers. Moreover, there is no use tax exemption for purchases of personal items, whether purchased by a business or otherwise.

## **4. Transportation Charges.**

The taxpayer noted that freight charges could not be determined on many tile purchases. Idaho Code § 63-3613 excludes separately stated charges for delivery to the consumer from the

price subject to tax. The auditor, however, examined all the invoices scheduled. Many of the invoices did not show a separately stated charge for delivery. For this reason, no deduction can be made for delivery and handling on those items.

**5. Fabrication Labor.**

Idaho Code § 63-3612 defines the term “sale” for the purposes of the Idaho Sales Tax Act. Transactions included within this definition are taxable when the purchaser is the consumer of the item purchased. This statute states the following, in relevant part:

**63-3612. Sale.** (1) The term "sale" means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter.

(2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged or bartered:

(a) Producing, fabricating, processing, printing, or imprinting of tangible personal property for consumers who furnish, either directly or indirectly, the tangible personal property used in the producing, fabricating, processing, printing, or imprinting.

(d) A transfer of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

Therefore, charges for labor to create or process tangible personal property are taxable.

For the above reasons, the Notice of Deficiency is affirmed but must be modified to show the taxpayer’s partial payment to the Tax Commission on February 19, 2002.

WHEREFORE, the Notice of Deficiency Determination dated December 21, 2001, is MODIFIED, APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Taxpayer pay the following tax, penalty, and interest (calculated through June 20, 2002):

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$3,055	0	\$71	\$3,126

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]  
[Redacted]

Receipt No. [Redacted]

---