

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16209
[REDACTED],,)	
)	DECISION
Petitioner.)	
_____)	

On October 24, 2001, the Sales, Use, and Miscellaneous Tax Audit Bureau of the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing additional use tax, and interest in the total amount of \$95,090 for the period of November 1, 1997 through October 31, 2000. The taxpayer did not contest a portion of the deficiency and paid \$5,438 on August 16, 2001. The taxpayer’s CPA filed a timely protest and petition for redetermination and requested an informal hearing before the Tax Commission. An informal hearing was held on April 25, 2001.

The taxpayer installs computer network cabling and related accessories. The installation requires that cable be strung through the walls and ceilings of buildings for its customers. At issue is the factual question of whether the cable becomes a fixture to real estate or whether it retains the characteristics of tangible personal property. This is important because of the way the Idaho Sales Tax Act treats sales to building contractors.

Idaho Code § 63-3612 defines the term “sale” as “any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration...”

Idaho Code § 63-3609 states:

63-3609. RETAIL SALE -- SALE AT RETAIL. The terms "retail sale" or "sale at retail" means 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 section 63-3612(h), Idaho Code.

(a) All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by

them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

(b) For the purpose of this chapter, the sale or purchase of personal property incidental to the sale of real property or used mobile homes is deemed a sale of real property.

Because sales of real property improvements are not included within this definition, building contractors do not charge sales tax to their customers. Instead, as indicated by Idaho Code § 63-3609, building contractors pay sales or use tax on their purchases of materials that they will install into realty.

Finally, Idaho Sales Tax Rule 067.02 (IDAPA 35.01.02.067.02) adopts the common law three-factor test to determine if an item has become a fixture:

02. Three Factor Test. A three factor test may be applied to determine whether a particular article has become a fixture to real property. The three tests to be applied are: (7-1-93)

a. Annexation to the realty, either actual or constructive. (7-1-93)

b. Adoption or application to the use or purpose to which that part of the realty to which it is connected is suitable. (7-1-93)

c. Intention to make the article a permanent addition to the realty. (7-1-93)

The taxpayer in this case treated all its sales as retail sales of tangible personal property. The taxpayer also contracted to install networks for several tax exempt entities. The auditor treated all the installations as real property improvements. The deficiency arises from the installations for entities exempted from sales tax by Idaho Code § 63-3622O. The taxpayer did not pay either sales or use tax on the materials that were installed for those entities. The installation of building materials by a contractor working for such an agency is taxable pursuant to Idaho Code § 63-3622O(4), which states:

(4) The exemptions granted by subsection (1) of this section do not include the use of tangible personal property by a contractor used to improve real property of an exempt entity when such use is within the definition provided by section 63-3615(b), Idaho Code, whether . . .

The taxpayer presented evidence on the expected life of the cable and pointed out that technological changes will make the cabling obsolete in a relatively short time. Nevertheless, the Commission feels that the cable is so integrated into the building that it has become a fixture. It is clearly annexed to the building. It is adapted to the use of the building in that it makes it possible to network the computers of a commercial or educational enterprise. Finally, it appears that it is the intent of the taxpayer's customers to leave the cable in place until it becomes obsolete. As the California Court of Appeals has pointed out:

In order to make an article a permanent accession to the land its annexation need not be perpetual. It is sufficient if the article shall appear to be intended to remain where fastened until worn out, until the purpose to which the realty is devoted has been accomplished or until the article is superseded by another article more suitable for the purpose. *C.R..Fedrick, Inc. v. State Board of Equalization*, 204 Cal. App. 3d 252, 251 Cal. Rptr. 305 (1988)

The taxpayer also raised two other issues. First, one of the taxpayer's customers verified that it had paid use tax on the cable installed by the taxpayer. Although the customer did not incur any legal liability for this tax, it would be inequitable to collect the tax from the taxpayer as well. Purchases for those contracts were therefore deleted.

Second, rather than examine all the taxpayer's purchases, the auditor, with the taxpayer's agreement, examined sample periods and projected the amount over the audit period. At the hearing, taxpayer's CPA stated that he thought the sample was not representative of the entire audit period. After agreeing to waive the 180 day time period pursuant to Idaho Code § 63-3045B, the auditor expanded the test period. These two changes reduced the amount of tax

liability by \$23,794. Also, as noted above, the taxpayer made a partial payment on August 16, 2001. The deficiency must be modified to reflect these changes.

WHEREFORE, the Notice of Deficiency Determination dated October 24, 2001 is hereby modified and, as so modified, 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 February 28, 2003):

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$51,406	\$16,581	<u>\$67,987</u>

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 _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

I hereby certify that on this ____ day of _____, 2003, 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]
