

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 16717
[REDACTED]	)	
	)	DECISION
Petitioner.	)	
_____	)	

On May 24, 2002, the Sales, Use and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The Notice proposed additional use tax, penalty and interest in the total amount of \$72,735 for the period January 1, 1995 through February 28, 2001. The taxpayer's authorized representative filed a timely appeal and petition for redetermination on July 24, 2002.

The taxpayer and its representative requested an informal conference, which was held on November 7, 2002. It was determined during the conference that there was insufficient information available for the auditor to calculate an accurate tax deficiency. It was agreed that the taxpayer would make additional information available for the auditor to review. This was done, and the Commission approved of adjustments to the work papers.

**DISCUSSION OF FACTS**

The taxpayer is a real property contractor based in Oregon and has an office in Idaho. The taxpayer is not registered with the Commission to accrue and remit use tax. The use of construction equipment owned by the taxpayer and brought to Idaho to improve real property was the sole issue of the audit.

**ANALYSIS AND CONCLUSIONS**

Idaho imposes a use tax on tangible personal property used in the state.

Imposition and rate of the use tax -- Exemptions. -- An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after July 1, 1965, for

storage, use, or other consumption in this state at the rate of five percent (5%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property...(Idaho Code §63-3621)

“Use” has a specific meaning in the tax code.

...(b) The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations...(Idaho Code §63-3615)

Equipment owned by the taxpayer and used in Idaho to fulfill real property contracts but not permanently stored in the state qualifies in Idaho Code §63-3621A as *transient equipment*. That code section explains how to compute the tax liability.

**Use tax on transient equipment.** -- (a) As used in this section, the term "transient equipment" means tangible personal property which is:

(1) Subject to use tax in this state; and  
(2) Eligible for depreciation under the federal internal revenue code and actually depreciated on the owner's federal income tax return; and

(3) Present in this state for a cumulative period of time totaling not more than ninety (90) days in any consecutive twelve (12) months. For purposes of this subsection, any part of a day is one (1) day.

(b) In the case of transient equipment owned and operated by a nonresident of this state, the use tax imposed by section 63-3621, Idaho Code, may be the lesser of the amount of tax computed upon:

(1) The value of the property. A recent sales price shall be presumptive evidence of the value of the property. If there is no recent sales price, the value shall be the fair market value of the property on the date the property is first brought into Idaho; or

(2) The fair rental value of the property during the time the property is located in Idaho. Fair rental value is the amount for which the same or similar property could be leased or rented by the taxpayer from another, unrelated person in the business of leasing or renting such equipment for profit. A taxpayer electing to pay use tax on the fair rental value must establish the value by clear and convincing evidence. Any allowable credit for sales or use taxes paid to another state shall be first exhausted before any tax becomes due under this section.

(c) If transient equipment taxed upon its fair rental value ceases to qualify as transient equipment, it shall be taxed as provided in section

63-3621, Idaho Code, based upon the value at the time the equipment ceased to qualify.

(d) A taxpayer may elect to pay tax on the fair rental value on or before the due date of the first tax return on which the use tax is due. The election need not be filed with the state tax commission but must be reflected in the records supporting the computation of the tax shown to be due on the return. After the due date of the first tax return on which the use tax is due, an election may only be made with the written approval of the state tax commission. The commission shall grant approval only upon evidence establishing that at the time the equipment first became subject to use tax in this state, the taxpayer intended a use for the equipment which would have qualified the property as transient equipment.

(e) Upon discovery of property subject to use tax in this state in regard to which no use tax has been reported, the state tax commission may assert use tax in the manner provided in section 63-3629, Idaho Code, based upon the fair rental value if the commission finds that at the time the equipment first became subject to use tax in this state, the taxpayer intended a use for the equipment which would have qualified the property as transient equipment.

During the informal conference, both the taxpayer and representative said they did not dispute that tax was owed on construction equipment used in Idaho, but they had additional facts pertaining to the equipment and the time it was used in Idaho. All agreed that the auditor would review the additional facts and make adjustments to the work papers. This was done, and the Commission sent new work papers and tax schedules to the taxpayer and its representative on March 20, 2003.

Following the receipt and review of the revised figures, the representative told the Commission that the taxpayer's only disagreement with the revised audit findings was with the 25% penalty imposed by the Commission. The Commission upholds the penalty imposed by the auditor because no returns were ever filed by the taxpayer for the time period under audit.

**Additions and penalties.** -- The additions, penalties and requirements provided by the Idaho Income Tax Act, sections 63-3046, 63-3075, 63-3076 and 63-3077, Idaho Code, shall apply in the same manner and to the same extent to this act as to the Idaho Income Tax Act and shall cover acts, omissions, and delinquencies under this act similar to acts, omissions and delinquencies under the Idaho

Income Tax Act and such additions, penalties and requirements shall, for this purpose, be described as and be for acts, omissions, delinquencies and requirements under the Idaho Sales Tax Act; provided... (Idaho Code §63-3634)

**Penalties and additions to the tax in case of deficiency. ...**

(c)(1) In the event the return required by this chapter is not filed on or before the due date (including extensions) of the return, there may be collected a penalty of five percent (5%) of the tax due on such returns for each month elapsing after the due date (including extensions) of such returns until the return is filed...

(g) Total penalties imposed under subsections (a), (c) and (d) of this section and under section 63-3033, Idaho Code, shall not exceed twenty-five percent (25%) of the tax due on the return.(Idaho Code §63-3046)

The taxpayer actively seeks business in Idaho and is believed to have an ongoing, accumulating use tax liability. The taxpayer has not acquired a permit to accrue and remit use tax to the State despite being advised to do so.

The Commission also finds the addition of interest to the taxpayer's liability appropriate per Idaho Code § 63-3045. Interest on the Notice of Deficiency Determination has been updated to the present.

WHEREFORE, the Notice of Deficiency Determination dated May 24, 2002, 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:

TAX	PENALTY	INTEREST	TOTAL
\$35,764	\$8,941	\$ 7,914	\$ 52,619
		LESS PAYMENTS	<u>(\$30,887)</u>
		TOTAL DUE	<u>\$21,732</u>

DEMAND for immediate payment 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 \_\_\_\_\_, 2003.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

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]  
[REDACTED]

[Redacted]