

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16725
[REDACTED])	
)	DECISION
Petitioner.)	
_____)	

On June 20, 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 taxes and interest in the total amount of \$38,752 for the period June 1, 1995 through December 31, 2001. The taxpayer filed a timely appeal and petition for redetermination on July 30, 2002. The taxpayer requested an informal conference that was held on October 10, 2002 and was followed by correspondence. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the deficiency and affirming the adjusted deficiency determination.

DISCUSSION OF FACTS

The taxpayer is a real property contractor that installs hard-wired security systems, burglar alarms, closed circuit monitoring systems, and nurse call systems. It began business in 1995 as a limited liability corporation but did not apply for a permit number until November of 1999. The business incorporated in July of 2000 and registered for a sales tax permit in that month under its corporate name.

In general, purchasers are responsible for paying sales tax on purchases of tangible personal property.

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 . . .
(Idaho Code §63-3619)

When sales tax has not or cannot be paid, a use tax is due.

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 . . .

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. (*Idaho Code §63-3621*)

Additionally, a statute places responsibility for tax directly on those who use materials to construct or improve real property:

(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. (*Idaho Code §63-3609*)

The taxpayer indicated that it was confused by conflicting information received from the Commission. According to the taxpayer, the Commission told it to collect a sales tax on its transactions with customers. On another occasion it was told to pay sales taxes on purchases and remit use tax on untaxed purchases because the business was a real property contractor.

Accepting the fact that the taxpayer was uncertain about how to bill its customers, the auditor allowed for sales tax collected to be credited against any use tax owed. This equitable measure lessens any adverse consequences of misunderstanding the application of the law.

At the informal hearing, the taxpayer offered facts that would lower the tax liability. The Commission is satisfied with respect to these facts and has adjusted the deficiency and related interest accordingly.

The Commission sent revised figures to the taxpayer on February 4, 2003. When no response was received, the Commission followed up with a telephone call to remind the taxpayer to respond. The Commission received no further information and therefore issues this decision.

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 June 20, 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
\$23,766	\$0	\$7,840	\$31,606

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 _____, 2003.

IDAHO STATE TAX COMMISSION

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]
