

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination of:)	
)	DOCKET NO. 17074
[REDACTED])	
)	DECISION
Petitioner.)	
_____)	

On August 15, 2002, the Idaho State Tax Commission received a refund claim from [Redacted] requested a refund of Idaho sales and use tax paid during the period of April 1, 1995 through April 30, 2001 in the amount of \$11,890.85. The tax was paid on the purchase of waste containers that were purchased for resale.

The Sales Tax Audit Section of the Idaho State Tax Commission reviewed [Redacted]' refund claim and issued a refund of \$6,151.65 plus \$838.63 interest. The balance of the refund request was denied, and the Commission issued a Notice of Deficiency Determination Refund Denial for the remainder of the claim on October 15, 2002. The refund was denied because it was barred by the statute of limitations found in Idaho Code § 63-3626.

[Redacted] filed a protest and requested a redetermination on December 12, 2002. The Commission acknowledged the protest in a letter dated December 18, 2002. [Redacted] requested an informal hearing which was held on April 8, 2003.

FACTS

The taxpayer is a waste management and disposal business, picking up garbage and refuse in Teton County, Idaho. As part of this business, the taxpayer rents refuse containers to its customers. The taxpayer alleges that when it began business in Idaho in 1995, the State Tax Commission advised it that it should "pay sales tax on all container purchases." Apparently, this advice is undocumented. However, any such advice would have been contrary to the State Tax Commission's

long-standing rules and regulations that the rental of tangible personal property in conjunction with a nontaxable service is a taxable rental under Idaho Code § 63-3612, qualifying the owner of the containers to purchase them tax exempt as a purchase for resale. *See, e.g.,* “Memorandum Decision,” *Browning Ferris Industries, Inc v. The State Tax Commission of the State of Idaho*, Ada County District Court case number 76537 (July 27, 1983) (Rental of trash “dumpsters” subject to tax), and *Ryder v. Idaho State Tax Com’n*, 130 Idaho 245 (1997) (Rental of radio pagers in conjunction with non-taxable communication service subject to sales tax). The taxpayer did not collect sales tax on its rentals of the containers from 1995 until it was contacted by the Tax Commission’s sales tax audit staff and advised that it should collect and remit sales tax on the rental of the containers.

The Commission’s staff contacted the taxpayer sometime in early 2001. The Commission had, at that time, started a program initiated because the staff found that some companies engaged in the trash and refuse disposal business in Idaho were charging tax in accordance with requirements of the Sales Tax Act, while others – including this taxpayer - were not. Although the taxpayer was advised to correct its practice and begin collecting tax prospectively on the rentals, no retroactive assessment action was taken. In other words, the audit staff did not issue the taxpayer a deficiency notice for the approximately \$6,500 of tax it should have collected from its customers and remitted to the state, but did not. The taxpayer began collecting Idaho sales tax on the rental of the containers on July 1, 2001.

On August 14, 2002, the taxpayer filed a claim for refund of the Idaho sales or use tax it had paid on the purchase of containers between April 1995 and April 2001 in the amount of \$11,890.85. The Tax Commission refunded \$6,151.65 plus interest; however, the Commission did not refund the remainder of the refund claim because the claim was barred by the statute of limitations. The

taxpayer protested the denial of the refund, presenting the issue to be decided by this Commission.

DISCUSSION

The taxpayer does not contest that the amounts it seeks to have refunded were paid before the date that the statute of limitations period for refunds provided in Idaho Code § 63-3626 barred the claim. Instead, the taxpayer relies on the doctrine of “equitable recoupment,” which can, in proper cases, create an exception to statutes of limitations both for the assessment and for the refund of tax.

Equitable recoupment is a judicially created doctrine used as a defense allowing redress against a timely claim that results in the double inclusion or double exclusion of items, when the correction of such items would be barred by the statute of limitations. The Idaho Supreme Court addressed equitable recoupment in *Harman’s of Idaho, Inc. v. Idaho State Tax Commission*, 114 Idaho 740 (1988), but did not expressly hold that the doctrine is part of the tax law of Idaho. The Court only held that the doctrine did not apply to the facts in *Harmon’s*. The court recognized the criteria that must be met for the doctrine to apply in any particular case:

The doctrine of equitable recoupment applies if "a single transaction constitute[s] the taxable event claimed upon and the one considered in recoupment." [Citations omitted.] The single transaction must also be subjected to two taxes based on inconsistent legal theories. [Citation omitted.] Finally, the amount claimed in recoupment must be barred by the statute of limitations, while the asserted deficiency by the government must be timely. [Citations omitted.]

Id. at pg 743, brackets in original.

The doctrine of equitable recoupment does not apply to this taxpayer for any of several reasons.

First, in jurisdictions where the doctrine is recognized, it is available only as a defense against an asserted liability. *United States v. Dalm*, 494 U.S. 596 (1990). In other words, it only works as an offset. Were the amount sought to be recouped not barred by the statute of limitations,

it would be available to offset all or part of an amount (either a tax liability or a refund) claimed due from the party asserting the defense. In this case, as noted above, the State Tax Commission's audit staff did not attempt to collect from this taxpayer the amount of sales tax it should have collected from its customers but did not. Thus there is no assertion of liability against which to apply the sought recoupment as a defense. The file reflects that the refund the taxpayer seeks to recoup (\$5,739.20) is less than the sales tax that could have been asserted but was not (about \$6,500).

Second, there must be a single transaction that constitutes the taxable event claimed upon and the one considered in recoupment. Here there are two transactions, the rental of the containers to the customer, which are taxable retail transactions, and the taxpayer's purchase of the containers from the suppliers, which are not.

Third, the single transaction must also be subjected to two taxes based on inconsistent legal theories. Although the taxpayer alleges having received advice from the Commission, it has submitted no documentation to establish its allegation. In any event, the taxpayer paid the tax upon purchase (whether or not based on a misunderstanding of advice); the Commission never asserted tax on an inconsistent legal theory. In fact, as cited above, the Commission had long established authority consistent with the directions given in 2001.

Finally, the amount claimed in recoupment must be barred by the statute of limitations, while the asserted deficiency by the government must be timely. Since the State Tax Commission never asserted a deficiency – indeed the Commission's staff specifically did not assert the potential deficiency for uncollected sales tax – this criterion also fails.

WHEREFORE, the Notice of Deficiency Determination Refund Denial dated October 15, 2002, is hereby APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that [Redacted] refund claim is DENIED.

An explanation of the taxpayer's right to appeal this decision is enclosed.

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]
