

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17536
[REDACTED])	
Petitioner.)	DECISION
)	
)	

On May 23, 2003, 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 sales and use tax, penalty, and interest in the total amount of \$9,489 for the period April 1, 1999 through March 31, 2002. The taxpayer filed a timely appeal and petition for redetermination on July 25, 2003. The taxpayer did not respond to a hearing rights letter sent by the Commission to the taxpayer's CPA on September 11, 2003.

The taxpayer is in the business of selling, installing, and servicing dairy equipment. It also sells miscellaneous items such as pet food, garden seeds, and various tools and supplies. The taxpayer's letter protesting the Notice of Deficiency raised three issues. First, the taxpayer maintains that it is the seller's responsibility to collect sales tax. The taxpayer in this case made several purchases of items for its own consumption such as hand tools, cleaning supplies, and clothing exempt from sales tax. Many of these items were purchased from Idaho retailers. The auditor imposed use tax on these purchases pursuant to Idaho Code § 63-3621. The taxpayer argues that, since the seller did not collect the tax, it should be the seller's responsibility to pay it.

Idaho Code § 63-3621 imposes a use tax on the storage, use, or other consumption of tangible personal property in Idaho. The rate of the use tax is the same as the sales tax imposed by Idaho Code § 63-3619. The use tax is a complementary tax to the sales tax. Every state that imposes a 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. Another purpose is to provide equal treatment for those purchasers who can buy for resale and those who cannot. For instance, a furniture store would purchase furniture for resale and collect tax when it sells the furniture to its customers. If the storeowner removed goods from inventory and used them to furnish his own residence, he would owe use tax on his consumption of those goods. Thus, the use tax promotes equal treatment for in-state and out-of-state retailers and retailers and non-retailers.

Idaho Code § 63-3622 provides a mechanism whereby retailers may purchase inventory items for resale. A retailer may give its vendor a resale certificate stating that the retailer is in the business of selling or renting the type of goods it is purchasing. Subsection 63-3622(c) states: "If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax."

Presumably, the taxpayer gave its vendor a resale certificate in order to purchase the items exempt from tax. When the taxpayer used the items for its own consumption, the use was taxable.

The second issue raised by the taxpayer was that of double taxation. The taxpayer states that one of the vendors from which the taxpayer made exempt purchases is also being audited. The taxpayer maintains that the Commission is thus imposing tax twice on the same transactions, once on the sale and again on the purchase. A review of Tax Commission files showed that none of the audit periods of vendors overlapped with the audit period of the taxpayer in this case.

Moreover, the audit staff and the supervisors review all of the audit files to prevent such occurrences.

Finally, the taxpayer has objected to the imposition of the negligence penalty. The Commission, in its discretion, agrees to abate the penalty in this case.

WHEREFORE, the Notice of Deficiency Determination dated May 23, 2003, 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 and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$7,621	\$1,798	\$9,419

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, 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]
