

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17866
[Redacted])	
)	DECISION
Taxpayer.)	
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On November 7, 2003, the staff of 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), proposing use tax, penalty and interest for the period April 1, 1997, through June 30, 2002, in the total amount of \$45,849.

On January 5, 2004, the taxpayer filed a timely appeal and petition for redetermination, and on March 23, 2004, the taxpayer requested a hearing. On March 26, 2004, the Commission notified the taxpayer that an informal hearing had been scheduled for April 30, 2004, in [Redacted] Representatives of the Commission held the hearing on that date with the taxpayer’s president and office manager in attendance.

During the period under audit, the taxpayer improved real property in the agriculture industry, working primarily as a contractor for the dairy businesses. In the protest letter the taxpayer said, “Working directly with the dairy and agricultural industries we were told and did believe we were exempt on most of our purchases...” The taxpayer did not have a use tax permit and thought that vendors, both in and out of the state, applied tax to invoices as necessary. The taxpayer’s representatives reaffirmed these statements in the informal hearing held with the Commission.

The taxpayer did not challenge the Idaho statute, excerpted below in relevant part, upon which much of the liability is asserted:

63-3609. Retail sale—Sale at retail.—

(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.

The taxpayer brought financial hardship concerns to the Commission's attention. However, this decision focuses only on factual and legal issues pertaining to the tax liability.

Following the hearing, the Commission made adjustments to the deficiency and wrote to the taxpayer on July 29, 2004, notifying it of the adjusted amount. The taxpayer did not respond to this letter. The taxpayer has not provided the Commission with information to establish that the amount asserted in the Notice of Deficiency Determination, as adjusted, is incorrect. As a result, the Commission will uphold the tax deficiency notice, as adjusted, for the period April 1, 1997, through June 30, 2002.

A determination of the State Tax Commission is presumed to be correct. *Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). The burden is on the taxpayer to show that the deficiency is erroneous. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986).

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau, as adjusted, to be a reasonably accurate representation of the taxpayer's liability for the period April 1, 1997, through June 30, 2002.

The Bureau added interest to the sales and use tax deficiency pursuant to Idaho Code section 63-3045.

WHEREFORE, the Notice of Deficiency Determination dated November 7, 2003, is hereby MODIFIED, in accordance with the provisions of this decision 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>
\$25,405	\$ 6,038	\$ 31,443

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 included 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]

Receipt No.
