

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17935
[Redacted])	
Taxpayer.)	DECISION
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On May 8, 2002, 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 sales tax, penalty, and interest for the period January 1, 1996, to December 31, 1997, in the total amount of \$17,814. The Bureau issued a second Notice of Deficiency Determination on January 3, 2003, to the taxpayer proposing sales tax, use tax, penalty, and interest for the period May 1, 1995, to April 30, 2002, in the total amount of \$38,885.

The taxpayer did not respond to the first Notice of Deficiency Determination. On March 6, 2003, the taxpayer filed a timely appeal and petition for redetermination for the second Notice of Deficiency Determination covering the period May 1, 1995, to April 30, 2002. The auditor spoke with the taxpayer on several occasions following the protest and gathered additional information from the taxpayer in the latter's effort to reduce the liability.

After she made adjustments, the auditor referred the file to the Commission's legal section. On May 12, 2004, the Commission held an informal hearing with the taxpayer via telephone. The taxpayer later provided additional information by mail on September 16, 2004. The Commission, having reviewed the hearing transcript, the information subsequently sent by the taxpayer, and the audit file, hereby issues its decision upholding both audit deficiencies in part, with adjustments to the liability of each in light of evidence presented.

The taxpayer is a [Redacted]-based rock hauler with U.S. government contracts in Idaho. During the audit periods, the taxpayer sold rock from a leased U.S. government gravel pit; and performed some logging and road building. The taxpayer did not have an Idaho sales or use tax permit during either audit period.

The Commission agreed to make adjustments to the liability asserted in the first Notice of Deficiency Determination although the statutory period for an administrative appeal had expired. The Commission removed the use tax on various motor vehicles that the taxpayer proved were exempt from tax under Idaho Code §63-3622R(c), which allows an exemption for the sale or lease of motor vehicles with a maximum gross registered weight over 26,000 pounds that are registered under the international registration plan and are part of a fleet used substantially in interstate commerce.

In the second Notice of Deficiency Determination, the taxpayer was held liable for the purchase of untaxed fuel used off-road. During the hearing, the taxpayer questioned whether some of the fuel qualified for an exemption for use in clearing timber in preparation for road building. The Commission mailed to the taxpayer IDAPA 35.01.02.102, Idaho Sales and Use Tax Administrative Rules, wherein Paragraph 03 speaks to the exemption sought:

03. Property Used In Logging Operations. The logging exemption applies to tangible personal property primarily used in a logging activity without regard to the primary business activity of the person performing the logging. For example, a contractor building a road for the Forest Service may claim the logging exemption when purchasing equipment and supplies primarily used to remove the timber from the right-of-way if the timber is resold, even though logging is not the contractor's primary activity.

Thereafter, the taxpayer did not provide any estimation or documentation of qualifying activities or fuel uses that would qualify for the exemption.

The Commission removed the liability related to the sale of crushed rock for 1997, 1998, and part of 1999 based on the taxpayer's contention that it was not a party to those transactions. There was a related entity during those time periods that owned the sales contracts.

The taxpayer questioned the auditor's finding that an excavator was subject to an Idaho use tax because it was present in the state more than 90 days. The Idaho Code provides an exemption from the full tax on the purchase price or fair market value of equipment if it qualifies as "transient equipment":

63-3621A. 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* (Cited in relevant part, emphasis added.)

The auditor held the use of the excavator as taxable from 1998 when it was purchased, relying on the taxpayer's accountant's paperwork for the purpose of Idaho income tax, which attributes 50% of the equipment's time to Idaho. The taxpayer argues that the 50% figure refers to the time it was used, not where it was located. The taxpayer made a similar argument for two pickup trucks. In the absence of qualified evidence to the contrary, the Commission upholds the auditor's interpretation.

The taxpayer claims that certain equipment rentals were owner-operated nontaxable services rather than the bare rentals of tangible personal property. IDAPA 35.01.02.024 , Idaho Sales and Use Tax Administrative Rules, Paragraph 03, speaks to the exclusion sought:

03. Fully Operated Equipment Rentals.

a. A fully operated equipment rental, equipment with operator, is a service rather than a retail sale of tangible personal property. No sales tax is due on a fully operated equipment rental.

b. A fully operated equipment rental is an agreement in which the owner or supplier of the equipment or property supplies it along with operators who are his own employees, and the property supplied is of no value to the customer without the owner's employees (Cited in relevant part.).

The auditor did not believe there was sufficient documentary evidence to agree with the taxpayer and used rental expense claimed on income tax returns as a taxable amount.

The Commission removed the liability held on a sale to the U.S. government. The auditor believed it to be a purchase, and the taxpayer later provided an invoice that proved it to be a sale. Federal law preempts any state from imposing a tax on the federal government.

Finally, the Commission abated the penalties associated with both Notices of Deficiency Determination.

Beyond those issues addressed above, the taxpayer has not provided the Commission with information to establish that the amounts asserted in the Notices of Deficiency Determination, as adjusted, are incorrect. As a result, the Commission will uphold the Notices of Deficiency, as adjusted, for the periods January 1, 1996, to December 31, 1997, and May 1, 1995, to April 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).

The Bureau added interest to the sales and use tax deficiencies. The Commission reviewed that addition, found it to be appropriate per Idaho Code § 63-3045 and updated interest accordingly.

WHEREFORE, the Notices of Deficiency Determination dated May 8, 2002, and January 3, 2003, are hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, are APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$ 22,100	\$ 0	\$ 10,388	\$ 32,488

Interest is calculated through December 31, 2004, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

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.
