

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18973
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On July 7, 2005, 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 the [Redacted] (taxpayer), proposing sales tax for the period of June 2005, in the total amount of \$2,200.

On July 21, 2005, the taxpayer filed a timely appeal and petition for redetermination. On September 14, 2005, the Commission sent a letter explaining the taxpayer’s right to an informal hearing. The taxpayer did not respond. On October 24, 2005, the Commission wrote once again to remind the taxpayer of its hearing rights. Once again there was no response. The Tax Commission, therefore, must decide this case based on the information available.

The tax in this case is being imposed on admission charges for the [Redacted]. Sales of admissions are included in the definition of “sale” found in Idaho Code § 63-3612, which states in relevant part:

63-3612. SALE. -- (1) The term "sale" means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter.

(2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged or bartered:...

(e) Admission to a place or for an event in Idaho, provided that an organization conducting an exempt function as defined in section 527 or exempted by section 501(c)(3) of the Internal Revenue Code, as incorporated in section 63-3004, Idaho Code, and collecting any charges for attendance at the aforementioned event,

shall not have those admission charges be defined as a sale if the event:

- (i) Is not predominately recreational or commercial; and
- (ii) Any included entertainment value is minimal when compared to the charge for attendance; and
- (iii) Such entity has paid sales and use tax on taxable property or services used during the event. . . .

Idaho Code § 63-3619 imposes sales tax on all transactions included within the definition of “sale” when the purchaser is the consumer, i.e. on retail sales. The legislature’s intent to impose sales tax on admissions in Idaho is clear; however, it does create an exception for admissions charged by a nonprofit organization when the purpose of the event is not recreational or commercial and when there is little or no entertainment.

The taxpayer’s attorney wrote two letters to the Tax Commission. The first letter, dated June 10, 2005, noted that: the taxpayer is a nonprofit 501(c)(3) corporation; the [Redacted] is not primarily commercial or recreational; although entertainment was provided, its value was minimal compared to the admission charge; and the taxpayer pays sales tax for purchases it makes. The letter states that the proceeds were donated to charity. The taxpayer states that “the purpose of the ([Redacted]) is to raise public knowledge of the commercial [Redacted] produced.” Finally, the taxpayer notes that one of the primary purposes of the [Redacted] is to provide education for [Redacted] judges in preparation for the “[Redacted] judge certification exam.”

The taxpayer’s protest letter listed the following eight statements describing the taxpayer and the event: the taxpayer is a 501(c)(3) corporation which is tax exempt; it paid sales tax on all materials used; it paid the Department of Law Enforcement for a license; it paid the Raffle Commission for a raffle license; it paid for a private security force and paid [Redacted] for two officers; volunteers provided hundreds of hours of labor; it sponsored the event as charitable and donated all of the proceeds to charity; and it did not pay for the [Redacted] or raffle items, which

were donated. The letter goes on to state that “simply put, [Redacted] qualifies as exempt from taxes under state law. Neither letter cited any statute or other authorities, although it appears clear the taxpayer is arguing that the admissions are not taxable because they fit into the nonprofit exception of Idaho Code § 63-3612(e).

Much of the objective information available to the Commission comes from an article printed by the [Redacted] titled “[Redacted]” found on the taxpayer’s website, [Redacted]. This article provides the following quote from [Redacted], the taxpayer’s president: “[Redacted].” (Emphasis added.) One person attending the event was quoted as saying she went to the [Redacted] for fun. The specific charge for admission is not stated anywhere in the Commission’s records or in information provided by the taxpayer. The article stated, however, that approximately [Redacted] people attended and the event was expected to raise approximately [Redacted]. Presumably then, the admission was approximately [Redacted] per person. Admittedly, judging the value of entertainment is a very subjective thing. Nevertheless, it seems likely that people attending received at least [Redacted] worth of entertainment. The article also noted that some people had come to the festival to figure out which [Redacted] they would like to buy. By the taxpayer’s own admission, the purpose of the event was to raise public knowledge of the [Redacted] produced. From these statements, it is reasonable to conclude that the event had commercial aspects as well.

The taxpayer also argued that a primary purpose of the [Redacted] is for education of [Redacted] judges in preparation for the “[Redacted] judge certification exam” and includes seminars, tours and related subjects. Presumably, however, most, if not all, of the admission charges were paid by people who did not attend the event to learn how to judge [Redacted] but by people who came to [Redacted].

For these reasons, the Commission finds that the nonprofit exception provided by Idaho Code § 63-3612(2)(e) does not apply to the taxpayer's admission charges for this event.

WHEREFORE, the Notice of Deficiency Determination dated July 7, 2005, 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>
\$2,200	\$63	\$ 2,263

Interest is calculated through January 10, 2006, and will continue to accrue at the rate set forth in Idaho Code section 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 _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, 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]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]
