

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19099
[REDACTED])	
Petitioner.)	DECISION
)	
)	
)	

On June 21, 2004, the staff of the Sales Tax Audit Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing sales and use tax, penalty, and interest for the period of April 1, 1998, through November 30, 1999, in the total amount of \$8,270.

On July 1, 2004, the taxpayer filed a timely appeal and petition for redetermination. After receiving the NOD, the taxpayer requested time to file additional documentation. On October 25, 2005, the Commission sent the taxpayer a notice of its right to a hearing before the Commission. An informal hearing was held on December 1, 2005.

The taxpayer was formed to develop and manage [Redacted]. The items at issue are primarily purchases of materials and fixtures used in the construction of the buildings. Idaho Code § 63-3609 defines building contractors as the consumers of the materials they install. This statute states that all sales to building contractors are taxable.

Idaho Code § 63-3621 imposes a tax on the use of tangible personal property in Idaho. The use tax is a complementary tax to the sales tax. If the purchaser does not pay sales tax to the seller when he purchases goods used in Idaho, the purchaser must pay use tax.

Of the items in question, the majority were building materials purchased from out-of-state suppliers on which the taxpayer failed to accrue and remit use tax. There were also various purchases of office equipment, photographs, and furnishings. The auditor imposed tax on

several purchases because the taxpayer was unable to provide purchase invoices showing that it paid sales tax to the vendor or other evidence that the purchase was not subject to tax.

After the hearing, the taxpayer sent more documentation showing that some of the purchases were for services or other nontaxable items. As a result of this documentation, the Commission has removed the purchases for which no tax is due. The items deleted were purchases of services or purchases upon which tax had been paid.

The taxpayer objected to several items because it stated that they were payments to subcontractors. After reviewing the items, it appears that they were actually purchases of materials from out-of-state vendors. No adjustment could be made for them.

The NOD included a five percent negligence penalty. The taxpayer is owned by a large building contractor and paid no use tax during the six year audit period. The Commission believes therefore that such a penalty is justified in this case.

WHEREFORE, the Notice of Deficiency Determination dated June 21, 2004, is MODIFIED, 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>
\$5,828	\$291	\$2,799	\$8,918

Interest is calculated through May 31, 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 _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, 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.
