

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination of)	DOCKET NO. 19530
)	
[REDACTED],)	DECISION
)	
Petitioner.)	
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On July 18, 2006, the Sales and Use Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination for the period of July 1, 2006, through June 30, 2007, to [Redacted] (taxpayer), asserting amusement device permit fees and penalty totaling \$680 for its failure to buy and affix current decals for amusement devices.

In a letter dated July 20, 2006, the taxpayer protested the penalty portion of the Notice of Deficiency Determination. The taxpayer requested an informal hearing via telephone, which was held on August 22, 2006.

[Redacted] Idaho Code § 63-3623B imposes upon owners or operators of amusement devices an annual permit fee in lieu of sales tax remitted from each device's revenue stream. Additionally, the statute imposes a \$50 penalty per device for the owner/operator's failure either to buy the permits or display the decals that are evidence the required fees have been paid. The code section is noted below, in relevant part:

63-3623B. AMUSEMENT DEVICES. --(b) In lieu of the imposition of sales tax upon the use of the amusement device, the owner or lessee or person having the right to impose a charge for use of the amusement device must pay an annual permit fee of thirty-five dollars (\$35.00) for each such device.

(c) Upon payment of the permit fees, the state tax commission shall issue the permit(s) to the owner or lessee or person having the right to impose a charge for use of the amusement device.

(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year.

(e) The state tax commission shall adopt a uniform system of

providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device.

(f) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:

(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars (\$50.00) for each device for failure to pay timely permit sticker fees.

(g) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code. (emphasis added)

In its letter of protest and during the telephonic hearing, the taxpayer explained that it was late buying and affixing the decals due to significant changes in its accounting system and staff. In the transition, someone misplaced a letter from the Commission reminding the business to buy and affix current (renewal) decals by July 1, 2006. The taxpayer bought decals on or about August 28, 2006, in response to the audit findings.

According to the taxpayer, the operation of amusement devices is not its primary business. It discards the machines when they break and does not replace them. It had no intention of avoiding the taxes.

These statements are not persuasive defenses against a negligence penalty. However, the Commission reviewed the decal purchase history of the taxpayer and believes that the level of past compliance warrants a reduction in the penalty imposed in the current audit. Therefore, the Commission affirms \$200 in penalty and abates \$200 in penalty. It also acknowledges that the taxpayer has paid the \$280 decal fee imposed in the Notice of Deficiency Determination.

WHEREFORE, the Notice of Deficiency Determination dated July 18, 2006, is hereby

MODIFIED, and as so modified is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the petitioner pay the following penalty:

<u>PENALTY</u>	<u>TOTAL</u>
\$200	\$200

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]
[Redacted]
[Redacted]
[Redacted]

Receipt No.
