

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 19751
[Redacted]	)	
	)	DECISION
Petitioner.	)	
	)	
	)	
	)	

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On August 9, 2006, 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 annual decal fees and penalty for the period July 1, 2001, through June 30, 2006, in the total amount of \$602.

On October 13, 2006, the Commission received a timely appeal and petition for redetermination accompanied by full payment. The taxpayer did not respond to the Commission's hearing rights letter sent October 23, 2006, and has provided nothing further for the Commission to consider. The Commission, having reviewed the file, hereby issues its decision upholding the annual decal fees and penalty.

Owners and operators of coin, currency, and token-operated amusement devices are required to purchase and display current decals by July 1 of each year. The taxpayer failed to purchase decals for the period beginning July 1, 2001, up to, and including, the annual registration period that began July 1, 2005. The taxpayer claimed that the amusement devices were not profitable, and the business provided money for patrons to operate them in an attempt to stimulate business. Under those circumstances, the taxpayer believed no decal purchase was necessary.

Idaho Code § 63-3623B cites the authority for the decal fee (also referred to as a permit fee), as well as the penalty provisions for non-compliance:

AMUSEMENT DEVICES. -- (a) For purposes of this section the term "amusement device" shall mean all coin, currency, or token operated machines and devices which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar 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. Such permit fee may be increased in a proportionate amount by the commission if the state sales tax rate increases (Author's Note: The fee per device was \$42 in the registration year beginning July 1, 2004. IDAPA 35.01.02.109.02.a Idaho Sales and Use Tax Administrative Rules).

(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year. Such application shall contain the same information required on an application to secure a seller's permit under this chapter and shall be accompanied by the annual permit fee due for each device.

(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. No person subject to a permit fee under this chapter may impose a charge or collect any consideration for use of such amusement device unless such official decal, label, or other official indicia, as required herein, is affixed to 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.**

(2) A person who knowingly secures or attempts to secure an amusement device permit sticker under this section by fraud, misrepresentation, or subterfuge or uses any permit issued under this section in a fraudulent manner shall be subject to a penalty of up to twenty-five thousand dollars (\$25,000).

(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.

(h) The commission may revoke all permits of any person who operates any amusement device without complying with the provisions of this section. Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(i) Permits issued under this section are transferable to another person only after written notice of the transfer is given to the state tax commission (Idaho Code §63-3623B, emphasis added.)

The Commission notes from paragraph (f)(1) of the code cited above that it is “the **right** to impose a charge for the use of [an].... amusement device” (emphasis added), rather than the requirement that patrons deposit money in the device, that justifies the imposition of a decal fee. Had the Commission been able to verify that patrons never deposited money in the devices, it would nevertheless conclude that the taxpayer was obligated to buy the decals.

The taxpayer has not provided the Commission with information to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the tax deficiency notice for the period July 1, 2001, through June 30, 2006. 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)), and 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 to be an accurate representation of the taxpayer’s liability for the period July 1, 2001, through June 30, 2006.

WHEREFORE, the Notice of Deficiency Determination dated August 9, 2006, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following:

<u>TAX</u>	<u>PENALTY</u>	<u>TOTAL</u>
\$252	\$350	\$602
	Less Payment	<u>(602)</u>
	Total	\$ 0

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.

\_\_\_\_\_