

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20156
[Redacted],)	
)	DECISION
Taxpayer.)	
_____)	

On February 9, 2007, the staff of the Sales, Use and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Refund Determination to [Redacted] (Taxpayer). The Bureau denied the entire requested refund amount of \$9,094.84.

In a letter dated April 10, 2007, the Taxpayer’s representative filed a timely appeal and petition for redetermination. The representative responded to the May 15, 2007, letter from the Commission advising the Taxpayer of its hearing rights. On June 28, 2007, the Commission held a hearing via telephone with the Taxpayer and its representative.

Having reviewed the case file, the information obtained at the hearing, and the applicable sales tax statutes and administrative rules, the Commission hereby upholds the Bureau’s findings for the reasons that follow.

Background and Refund Audit Findings

[Redacted] (Idaho Code § 63-3609).

[Redacted]. According to a rental agreement [Redacted], as described by the Taxpayer in its April 10, 2007, protest letter, the [Redacted] vendor agrees to maintain a sufficient inventory [Redacted]for the wholesaler’s use near the latter’s business location.

[Redacted].

[Redacted].

The Taxpayer paid a sales tax to the [Redacted] vendor [Redacted] in Idaho. Later, believing [Redacted] to be exempt from tax, the Taxpayer sought a refund. In so doing, the Taxpayer indicated that [Redacted] was not taxable because the [Redacted] were “exempt containers” under Idaho Code § 63 3622E and Idaho Sales Tax Administrative Rule 084.

The Taxpayer has two additional alternative theories for believing [Redacted] to be non-taxable. First, the Taxpayer is paying for the availability [Redacted], which it characterizes as a nontaxable service. Second, it views [Redacted] as equipment, and cites IDAPA 35.01.02.024.08 that equates the nontaxable purchase of equipment with nontaxable [Redacted]. That is, if the former is not taxable, neither is the latter, according to the Rule cited.

The Commission rejected the original argument and issued a denial of the refund request that is the sole subject of this decision. In this decision, the Commission rejects the alternative arguments as well.

Discussion of the Protest and Applicable Sales and Use Tax Statutes

In Idaho, the sale of tangible personal property is taxable unless an exemption applies. Rentals of tangible personal property are included in the definition of sale (Idaho Code § 63-3612(2)(h)).

Idaho Code § 63-3622E and Idaho Sales Tax Administrative Rule 084 govern the tax treatment of product containers. Since the [Redacted] that are the subject of this decision are shrink-wrapped to the goods being sold, they are defined as containers (IDAPA 35.01.02.084.01).

The following containers are exempt from sales tax, based upon this same rule (excerpted in relevant part):

Returnable or nonreturnable containers when sold with contents that are exempted from the tax, regardless of whether or not the

container is separately billed... (IDAPA 35.01.02.084.02.d)

The Taxpayer cites the above as a justification that it should be entitled to a refund of taxes paid [Redacted]. [Redacted].

Additionally, the Taxpayer has some mutually exclusive reasoning for portraying the transactions as not taxable. First, it notes that because [Redacted] is obligated to keep a pre-determined inventory [Redacted] available [Redacted], [Redacted] is providing a service, and not the sale of tangible personal property. With some exceptions, services are generally not taxed under Idaho sales tax statutes.

Alternatively, the Taxpayer would define [Redacted] as equipment and, citing the following Rule, conclude that the [Redacted] fee is not taxable:

Exempt Equipment Rentals. Equipment which would have been exempt from tax if purchased is also tax exempt if leased or rented. (IDAPA 35.01.02.024.08)

Analysis

The Commission first analyzes the argument that [Redacted] are either returnable or non-returnable and that they form a package [Redacted] that comprise non-taxable sales. [Redacted]. However, the Taxpayer's argument fails to consider the requirement that [Redacted] be "*sold with*" contents that are exempted from the tax (Idaho Code § 63-3622E(b), emphasis added).

The Taxpayer purchased the use [Redacted] in the form of a rental. They do not own and therefore do not take title [Redacted]. They cannot sell what they do not own. It follows from the language of the rental agreement, as told to the Commission, that the retail customers do not keep [Redacted]. They must be returned [Redacted] following the removal [Redacted].

California has a container statute similar to Idaho's. The California Court of Appeals ruled against a soft drink bottler, stating that it owed tax on the purchase of its returnable bottles

because it did not purchase returnable bottles for purposes of resale, but to use and reuse them (*Associated Beverage Company, Inc v. Board of Equalization*, 224 Cal.App.3d 192). In the present case, while the Taxpayer reminds us that it uses [Redacted] only one time before it is retrieved [Redacted], the significant fact is not the single use, but the unbroken ownership [Redacted]. Title [Redacted] cannot pass because the Taxpayer has only purchased conditional use via a rental arrangement, not ownership.

The Taxpayer's first alternative argument, mutually exclusive from the original, is that the ready availability [Redacted] is a service it pays for and that such a service is not taxable under Idaho's sales tax statutes. The Commission concurs that the abundance [Redacted] continuously available to the Taxpayer is an important aspect of the Taxpayer's [Redacted]. However, these assurances do not change the essence of the transaction. [Redacted]. This is undeniably a [Redacted] of tangible personal property under Idaho's tax statutes, not the sale of a nontaxable service.

Finally, there is the second alternative argument, mutually exclusive from the original, that the [Redacted] are equipment. If equipment can be purchased exempt, it can be [Redacted] exempt as well. The Commission agrees with the Taxpayer's conclusion, but finds the premise to be unfounded. Assuming, *arguendo*, that the [Redacted] are equipment rather than [Redacted], what exemption from tax is the Taxpayer claiming? If it abandons the premise [Redacted], it cannot claim they are tax exempt containers. It cannot claim a reseller's exemption because the wholesaler is not reselling the "equipment" to its retail customers. The [Redacted] (in this scenario, [Redacted]) is retrieving this equipment following the retailer's receipt of the goods it ordered. The taxpayer has not offered any statute or Rule under which its rental of equipment would qualify for a tax exemption.

WHEREFORE, the Notice of Refund Determination dated February 9, 2007, is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of the Taxpayer's right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2007, 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.

[REDACTED]
