

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20249
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On March 16, 2007, the staff of the Managed Audit Program of the Sales Tax Audit Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency (NOD) to [Redacted] (taxpayer) proposing sales and use tax, penalty, and interest due for the period of May 1, 2003, through December 31, 2006, in the total amount of \$14,890.

The taxpayer filed a timely appeal and petition for redetermination. On July 9, 2007, the Commission sent a hearing rights letter to the taxpayer at its last known address. This letter was returned as undeliverable.

On July 17, 2007, the Commission mailed a hearing rights letter to the taxpayer's bookkeeper, who was named as attorney-in-fact in a power of attorney which the taxpayer executed on June 23, 2006. The Commission received no response to this letter.

The taxpayer is owned by [Redacted]. In his protest letter, Mr. [Redacted] listed three reasons for his protest. First, he stated that he did not see the calculations for the deficiency. It is not clear why the taxpayer stated that he did not see the computations used to calculate the amount of the deficiency. The audit workpapers were mailed along with the NOD, which the taxpayer clearly received.

Second, he stated that he paid sales tax when he purchased some of the items upon which use tax was imposed. The taxpayer had the opportunity both before and after the NOD was sent

to provide the Commission with copies of invoices showing that tax was paid on questioned purchases. The taxpayer has failed to do so.

And finally he argued that the taxpayer should not have to collect and remit sales tax on sales of [Redacted] services. Sales of [Redacted] services are payments for the use of tangible personal property for the purpose of recreation. Such services fall within the definition of “sale” found in Idaho Code § 63-3612(f). For that reason, the taxpayer must collect tax from its customers on sales of [Redacted] services, as required by Idaho Code § 63-3619.

In Idaho, it is well established that a State Tax Commission deficiency determination is presumed to be correct 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, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986); *Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). In this case, the taxpayer has not met that burden.

WHEREFORE, the Notice of Deficiency Determination dated March 16, 2007, 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>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$11,493	\$1,635	\$2,130	\$15,258

Interest is calculated through October 31, 2007, 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 _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2007, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.