

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 20351
[REDACTED],	)	
	)	DECISION
Taxpayer.	)	
_____	)	

On May 30, 2007, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing sales and use tax and interest for the period of May 1, 2005, through May 31, 2005, in the total amount of \$7,503.

On July 5, 2007, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on September 24, 2007.

The taxpayer is in the business of building [Redacted]. On May 1, 2005, the taxpayer purchased a [Redacted] [Redacted] from [Redacted]. The imposition of use tax on this purchase is the basis of the deficiency.

Use tax is imposed under Idaho Code § 63-3621, which taxes the storage, use, or other consumption of tangible personal property in Idaho, unless an exemption applies. The use tax rate is the same as the sales tax rate. Every state that imposes a sales tax also imposes a complementary use tax. Any liability for use tax is extinguished if the purchaser pays sales tax to the seller at the time of purchase. In other words, use tax is imposed on purchases for which the seller did not charge sales tax.

In this case the taxpayer gave the seller an exemption claim form (Form ST-101) at the time of purchase. The taxpayer claimed the exemption provided by Idaho Code § 63-3622JJ, commonly known as the [Redacted] exemption:

[Redacted].

The taxpayer's only argument is that the Idaho Industrial Commission classifies his business as [Redacted] for the purposes of the worker's compensation law as provided in Title 72, Idaho Code. The taxpayer stated that he was confused because the Industrial Commission required him to pay the same premiums for worker's compensation insurance as businesses that are primarily devoted to [Redacted]. He apparently believed that requiring him to pay sales tax on his purchase of the [Redacted] was equivalent to saying that he was not in the business of [Redacted]. In his protest letter he made the following two statements, which are reproduced here verbatim:

[Redacted].

The Commission notes first that the taxpayer himself does not describe his business as [Redacted]. At the time he purchased the [Redacted], he stated on the exemption claim form that he was in the business of [Redacted]. On his 2006 income tax return, Form 1040, he gave his occupation as [Redacted], and on his Schedule C he stated that his principal business was [Redacted].

Furthermore, the worker's compensation law and the Idaho Sales Tax Act are not related. The rates for worker's compensation vary from industry to industry based on the estimated risk of injury to employees working in each industry. This has no bearing on whether a sales tax exemption applies to a particular purchase.

The [Redacted] exemption was not intended to be a complete exemption from sales tax on all purchases made by a business that is in some way connected to the [Redacted] industry. To qualify the equipment must be primarily and directly used in [Redacted]. Idaho Code § 63-3605B defines [Redacted]:

[Redacted].

The taxpayer stated that he used the [Redacted] in [Redacted] in areas that were being [Redacted]. The taxpayer did not state that he used the [Redacted] to cut down trees that he was going to sell. He stated that it was primarily used to [Redacted] and [Redacted]. The [Redacted] exemption is based on the use of the equipment. The statute specifically excludes tangible personal property used in activities other than the actual [Redacted]. Idaho sales tax administrative rule 102.07 (IDAPA 35.01.02.102.07) gives some examples of items that do not qualify for the exemption, including [Redacted]. Since these are the primary uses of the [Redacted], the [Redacted] exemption does not apply and the purchase is taxable. The Industrial Commission's classification of the taxpayer's business has no relationship to the imposition of tax on purchases of equipment not directly used in [Redacted].

WHEREFORE, the Notice of Deficiency Determination dated May 30, 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>INTEREST</u>	<u>TOTAL</u>
\$6,624	\$976	\$7,600

Interest is calculated through November 15, 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

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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.