

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 20158
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On February 16, 2007, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Refund Determination to [Redacted] (taxpayer) denying a claim for a refund of sales tax collected and remitted for the period of July 1, 2004, through June 30, 2006, in the total amount of \$12,643.43.

On April 19, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing with the Tax Commission, and no hearing has been held.

The taxpayer manufactures and sells [Redacted] During the time in question, the taxpayer sold several of these [Redacted] to [Redacted]. The taxpayer charged [Redacted] for tax on the entire sales price of these [Redacted]. The taxpayer is now asking for a refund of 45 percent of the tax collected. The basis of this claim is that the [Redacted] are [Redacted].

Idaho Code § 63-3619 imposes a sales tax at the rate of 6 percent on the sales price of tangible personal property sold at retail. Idaho Code § 63-3613 states that the sales price subject to tax is the total amount paid for tangible personal property; however, subsection 63-3613(c) makes an exception for sales of manufactured homes and modular buildings for which the sales price is limited to 55 percent of the sales price otherwise defined. For this reason, the taxpayer is arguing that the entire sales price of the [Redacted] should not have been subject to tax.

Idaho Code § 63-3606A provides the following definition of “modular building”:

**63-3606A. Modular building.** The term "modular building," as defined in section 39-4301, Idaho Code, is a substantially complete building *designed to be affixed to real property*. The term "modular building," includes all components incorporated in such modular building at the time of manufacture and remaining unchanged at the time of the original retail sale. Furniture, fixtures, furnishings, appliances, and attachments not incorporated as component parts of the modular building at the time of manufacture shall be subject to the sales and use tax separately and distinctly from the sales price of a modular building. Refrigerators, ranges, draperies, and wood burning stoves placed in the modular home by the manufacturer shall be deemed to be components incorporated into such modular building. (Emphasis added.)

Idaho Code § 39-4301(7) states that a modular building is “any building or building component, other than a manufactured or mobile home, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.”

The audit staff denied the refund claim because the [Redacted] in question do not appear to be designed to be affixed to real property nor do they appear to be actual fixtures to realty.

The [Redacted] in question are placed at [Redacted]. They are used to [Redacted]. [Redacted] For these reasons, they do not appear to be intended as permanent fixtures to realty.

The taxpayer did not respond to the Tax Commission’s hearing rights letter. The taxpayer’s representative telephoned the Commission in August of 2007 and said that he would send more information on the [Redacted]. The Commission sent a letter on December 4, 2007, asking if the taxpayer wished to send more information or schedule a hearing. The taxpayer was asked to respond to that letter by December 20, 2007. The taxpayer has not responded.

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). The burden is on

the petitioner to show that the deficiency is erroneous. *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The taxpayer has not met that burden in this case.

WHEREFORE, the Notice of Refund Determination dated February 16, 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 \_\_\_\_\_, 2008.

IDAHO STATE TAX COMMISSION

---

COMMISSIONER

**CERTIFICATE OF SERVICE BY MAIL**

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2008, 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]  
[Redacted]

Receipt No.