

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.