

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination of)	DOCKET NO. 20505
)	
[Redacted])	DECISION
)	
Taxpayer.)	
)	
)	

On August 24, 2007, the Sales and Use Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (Taxpayer) asserting amusement device permit fees and penalty totaling \$92 for the period July 1, 2007, through June 30, 2008.

The Taxpayer paid the permit fee (aka decal fee) and later protested the penalty portion of the Notice of Deficiency Determination in a letter received August 29, 2007. The Commission sent a hearing rights letter on September 28, 2007, but the Taxpayer did not respond.

Having reviewed the audit file, the protest letter, and applicable Idaho statutes, the Commission hereby upholds the Notice of Deficiency Determination based on the following.

[Redacted]. Idaho Code § 63-3623B imposes upon owners or operators of certain amusement devices an annual permit fee in lieu of sales tax remitted from each device's revenue stream. Additionally, the statute imposes a \$50 penalty per device for the owner/operator's failure either to buy the permits or display the decals that are evidence the required fees have been paid.

The code section is noted below, in pertinent part:

63-3623B. Amusement devices. (a) For purposes of this section the term "amusement device" shall mean all coin, currency, or token operated machines and devices which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar devices...

(d) All applications for a permit renewal must be made to the

state tax commission on or before July 1 of each year. Such application shall contain the same information required on an application to secure a seller's permit under this chapter and shall be accompanied by the annual permit fee due for each device.

(e) The state tax commission shall adopt a uniform system of providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device. No person subject to a permit fee under this chapter may impose a charge or collect any consideration for use of such amusement device unless such official decal, label, or other official indicia, as required herein, is affixed to such amusement device.

(f) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:

(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars (\$50.00) for each device for failure to pay timely permit sticker fees...

(g) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code... (emphasis added).

The Taxpayer does not argue that the amusement device requires a decal, and as noted earlier, the Taxpayer bought the required decal in late August of 2007. In its letter of protest, the Taxpayer writes that he lost the notice reminding him to purchase the decal.

The taxpayer has not provided the Commission with information to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the deficiency notice for the period July 1, 2007, through June 30, 2008.

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)), 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 Ct. App. (1986)).

WHEREFORE, the Notice of Deficiency Determination dated August 24, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the Taxpayer pay the following penalty: \$50.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of [Redacted] right to appeal this decision is enclosed.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2008, 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.