

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination)	DOCKET NO. 20584
)	
[Redacted],)	DECISION
)	
Taxpayer.)	
)	
)	
)	

On August 22, 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 \$460 for the period July 1, 2007, through June 30, 2008.

The Taxpayer paid the permit fees (aka decal fees) and later protested the penalty portion of the Notice of Deficiency Determination in a letter received October 1, 2007. The Commission sent a hearing rights letter on October 5, 2007, but the Taxpayer did not respond.

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

The Taxpayer operates a restaurant and pub that contains five amusement devices. 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 devices require a decal and, as noted earlier, the Taxpayer bought the required decals in late August of 2007.

In its letter of protest, the Taxpayer writes, "I do not have any excuse for the payment being late, except for being really busy with my business and doing an ongoing remodel of the . . . building. . . . This \$50 penalty seems very high considering the [decal] fee is only \$42."

The Commission reviewed the history of the Taxpayer and learned that in 2006 the Taxpayer bought decals timely but that in 2003, 2004, and 2005 it purchased decals after the July 1 deadline.

In light of the compliance history, the Commission upholds the Notice of Deficiency Determination giving credit for the payment of the required decals.

WHEREFORE, the Notice of Deficiency Determinations dated August 22, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the Taxpayer pay the following penalty: \$250.

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

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

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.
