

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 20769
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On September 21, 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, penalty, and interest for the period of April 1, 2003, through March 31, 2005, in the total amount of \$76,222.

On November 8, 2007, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on February 11, 2008. [Redacted], who are partners in [Redacted], appeared for the taxpayer.

The taxpayer operates a facility in [Redacted], Idaho, that features an [Redacted]. The facility includes a [Redacted].

The taxpayer did not collect sales tax during the audit period on the fees it charged its customers to use the [Redacted]. This is the only issue raised by the taxpayer. Idaho Code § 63-3612(2)(f) includes fees charged “for the use of ... tangible personal property or facilities for the purpose of recreation” within the definition of “sale” for the purposes of the Idaho Sales Tax Act. Such sales are therefore taxable under Idaho Code § 63-3619.

The taxpayer is arguing that the Commission cannot assert tax in this case because the owners were given incorrect advice from the Commission. [Redacted] stated that when he and his brother started their business they called the Tax Commission’s Boise office and were told they did not have to collect tax on the charges for [Redacted]. In other words, they are arguing

that the Tax Commission is estopped from asserting tax. The taxpayers could not name the person they spoke to; nor do they have any written statements from the Tax Commission to show that they were given erroneous information.

Merriam-Webster's Dictionary of Law defines the doctrine of "equitable estoppel" as "an estoppel that prevents a person from adopting a new position that contradicts a previous position maintained by words, silence, or actions when allowing the new position to be adopted would unfairly harm another person who has relied on the previous position to his or her loss."

The Idaho Supreme Court has ruled that the doctrine of estoppel may not be used against the Commission:

Equitable estoppel may not ordinarily be invoked against a governmental or public agency functioning in a sovereign or governmental capacity. [Citations omitted.]

'In the levy and imposition of taxes, the state acts in its sovereign capacity, and hence, in an action for the collection thereof, cannot be subjected to an equitable estoppel.' [Citations omitted.]

The government is not estopped by previous acts or conduct of its agents with reference to the determination of tax liabilities or by failure to collect the tax, nor will the mistakes or misinformation of its officers estop it from collecting the tax. [Citations omitted.] *State v. Adams*, 90 Idaho 195, 409 P.2d 415 (1965).

The taxpayer also explained that instructors give customers thorough instructions on how to [Redacted], implying that the object of the transaction is education. Although instruction is necessary for the [Redacted] and the protection of the taxpayer's property, the Commission believes that the customers are paying for the [Redacted].

[Redacted] also stated that he is experiencing extreme financial hardship; however, [Redacted] has only submitted information about his personal finances. He has not submitted

sufficient documentation to show that the taxpayer, [Redacted], is experiencing extreme financial hardship.

Finally, the Commission has agreed to waive the 5 percent negligence penalty in this case.

WHEREFORE, the Notice of Deficiency Determination dated September 21, 2007, is MODIFIED, and as MODIFIED, 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>
\$59,968	\$15,279	\$75,247

Interest is calculated through May 31, 2008, and will continue to accrue at the rate set forth in Idaho Code § 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 enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

IDAHO STATE TAX COMMISSION

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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.

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