

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 20801
[Redacted],	)	
	)	DECISION
Taxpayer.	)	
	)	
	)	
	)	
	)	

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On December 4, 2007, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a letter to [Redacted] [Redacted] (Taxpayer) dated December 4, 2007, partially denying the refund. The Bureau determined that the Taxpayer was entitled to a refund of \$211.50 but denied the remainder of the requested amount of \$299.56.

In a letter dated December 6, 2007, the Taxpayer filed a timely appeal and petition for redetermination. The Commission held a hearing via telephone on January 22, 2008, at the Taxpayer's request. The Commission has reviewed the file and examined the applicable statutes and other relevant information. For the reasons that follow, the Commission hereby upholds the Bureau's findings.

[Redacted]. At issue is sales tax paid by the Taxpayer for the purchase of materials it used [Redacted]. The Taxpayer seeks a refund of this tax based on the provisions of Idaho Code § 63-3640.

Effective October 1, 2006, the Idaho Legislature raised the statewide sales tax from 5 percent to 6 percent (Idaho Code § 63-3619). Customary with rate increases in the past, the legislature concurrently enacted a statute that allows a refund of the tax increase on certain purchases for contractors who entered into contracts before the effective date of the increased tax. In order to receive a refund, a contractor must prove, among other considerations, that he

performed work under a qualifying contract. In order to qualify, the contract must require that the cost of the sales or use tax be borne by the contractor (Idaho Code § 63-3640(2)(d)). If it does, and all other qualifications are met, the Commission is required to make a refund of the tax increase.

The two home building contracts at issue have the following Cost of Construction Clauses:

The contractor's bid is directly related to the cost of materials. **In such cases as natural disaster, labor strikes, material availability, war or other cost associated circumstances beyond the control of the contractor that cause any increases in material costs, the original bid will be modified by Change Order to accommodate for such circumstances.** If necessary, the contractor will show evidence of such cost increases. **The Purchaser shall be responsible for paying the General contractor the net cost increase that affects the total purchase price of the listed project** (Residential Construction Contracts, 8/30/06 and 3/28/06, emphasis added).

The Taxpayer does not regard a tax increase to be an increased cost of material, and therefore seeks the refund from the Commission rather than from its customers. However, the Taxpayer does not provide a convincing argument that the increased cost due to tax should be borne by the state rather than by the home purchasers under the plain language of the Cost of Construction Clause. In answer to specific questions, the Taxpayer agreed that for accounting and income tax purposes, a "cost of goods sold" calculation does not differentiate between taxes that add to the cost of material and the costs of the material itself.

More telling, perhaps, is the Taxpayer's voluntary admission that the [Redacted] contracts are closed. While not overtly so, this suggests that a much earlier attempt to seek the increased costs from its customers may have been successful. For the two contracts at issue, the Taxpayer requested a refund approximately 7 months and 13 months, respectively, after the

agreed-upon [Redacted] completion dates. Even allowing for change orders that would have extended the completion dates, a considerable amount of time passed between the projects' completion and the refund request.

The Commission sees nothing in the Taxpayer's contracts that would prevent the Taxpayer from recouping its increased costs (i.e., the tax increase) [Redacted] customers. Further, it believes that the Cost of Construction Clause is unambiguously applicable to what the Taxpayer seeks had the effort been initiated before the contracts were completed.

WHEREFORE, the Notice of Taxpayer Initiated Refund Determination dated December 4, 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**

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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