

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20848
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On November 2, 2007, staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The notice proposed additional sales tax, penalty, and interest in the total amount of \$61,122 for the period January 1, 2002, through December 31, 2007. The taxpayer filed a timely appeal and petition for redetermination on December 31, 2007. At the request of the taxpayer’s attorney, the Commission held an informal conference on March 11, 2008. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the deficiency determination allowing for one adjustment in the taxpayer’s favor.

DISCUSSION OF FACTS

The taxpayer, an Idaho resident, was a retailer of [Redacted]. He operated under the name of [Redacted] and [Redacted] manufactured by [Redacted]. During the audit period, he did not have an Idaho seller’s permit. He reported his sales revenue on Schedule C of his federal income tax returns. The primary issue in this case is uncollected sales tax on the sale of the [Redacted]. Additionally, in one known instance, the taxpayer billed sales tax to his customer but did not remit it to the state. During the audit period, the taxpayer also received commissions for arranging sales of [Redacted]. The auditor did not impose tax on these sales. Although the

taxpayer's attorney has repeatedly referred to these commissions, they have no bearing on the liability

PROTEST ISSUES

The representative states in the letter of protest that the taxpayer made only a few sales of [Redacted] and that the taxpayer's relationship with that company ended in the early 2000's. The taxpayer has not provided any documentation to substantiate this, and the auditor independently found two [Redacted]-related invoices dated March and April of 2004. Regardless, the taxpayer has not provided information to identify what his gross sales figures refer to, if in fact they do not refer to the resale of [Redacted], or to other transactions that may be subject to tax.

The representative objected to tax being held on an invoice that shows an Oregon address for the purchaser. Delivery by the seller to an out-of-state location would be a tax exempt sale, according to the representative, and the Commission agrees (Idaho Code § 63-3622Q). This invoice was not part of the taxpayer's records and was obtained independently. It was also independently determined from the purchaser and [Redacted] was delivered to, and assembled in, Idaho. The auditor collected the tax from the purchaser and credited the amount against the taxpayer's liability.

ANALYSIS AND CONCLUSIONS

Idaho Code § 63-3619 imposes a sales tax on retail sales. The sales of the [Redacted] were retail sales. The taxpayer should have applied for a permit and collected sales tax as required by Idaho Code § 63-3620(a). The Commission does not believe that the taxpayer's attorney disputes these facts or the conclusion at this time, despite some language to the contrary in the protest letter.

According to the auditor, the taxpayer said he did not keep receipts from his [Redacted] retail sales business. Independent of the taxpayer, the auditor obtained invoices showing that the taxpayer bought [Redacted] and resold them in Idaho. Accordingly, the auditor used gross receipts entries from the appropriate Schedules C of available income tax returns to determine how much tax should have been collected on sales.

The auditor calculated an average from four years' Schedule C sales figures to estimate a liability for the final two years of the audit period (2006 and 2007). The taxpayer's attorney asked the Commission to replace the estimate with the actual figures, but, as of this writing, the taxpayer has not filed his income tax returns for the two years in question. In correspondence with the representative the Commission agreed to wait until early August for the taxpayer to file the necessary returns. The Commission believes it has allowed sufficient time for the taxpayer to comply and chooses not to prolong this protest further.

The auditor used the best records available to calculate the deficiency. The Commission finds the auditor's approach reasonable and notes that the auditor reduced the amount taxable for 2004 because, as noted earlier, she was independently able to collect tax from one of the taxpayer's buyers.

The taxpayer objects to the penalty imposed in this audit. The auditor imposed a penalty equal to 25 percent of the tax due because the taxpayer failed to file returns required by the sales tax statute (Idaho Code § 63-3046(c)(1) and (g)). The taxpayer is knowledgeable regarding sales tax. He charged a tax on one invoice, yet failed to have a permit and remit the tax. He failed to keep the required records to facilitate a complete audit of sales transactions. He has another business and holds a seller's permit for that business, suggesting that his omissions in the instant case are not readily excusable.

The taxpayer did not provide records adequate to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the tax deficiency notice, as adjusted, for the period January 1, 2002, through December 31, 2007. 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).

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed these additions and found them to be appropriate per Idaho Code §§ 63-3045 and 63-3046. Interest is calculated to November 17, 2008, and continues to accrue until paid.

WHEREFORE, the Notice of Deficiency Determination dated November 2, 2007, is hereby MODIFIED, and as so modified is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$36,362	\$9,091	\$8,404	\$53,857

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

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.
