

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20959
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On October 19, 2007, [Redacted] (taxpayer) filed a sales and use tax refund claim with the State Tax Commission (Commission) in the amount of \$537,626.23 for the period of September 1, 2004, through December 31, 2005. On December 7, 2007, the staff of the Sales Tax Audit Bureau (Bureau) of the Commission issued a Notice of Taxpayer Initiated Refund Determination to the taxpayer refunding \$7,484.75 plus interest, but denying the rest.

On February 11, 2008, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on May 2, 2008.

[Redacted]. [Redacted]. [Redacted]. In its refund claim, the taxpayer stated that it paid use tax on purchases of equipment and collected sales tax [Redacted].

The taxpayer makes two arguments supporting its claim. The first has to do with sales [Redacted]. There are two statutes of the Idaho Sales Tax Act that deal with telecommunications equipment.

Idaho Code § 63-3621 imposes a tax on the storage or use of tangible personal property. The use tax is complementary to the sales tax. The rate is the same as sales tax. Payment of sales tax to a retailer extinguishes the use tax liability. Idaho Code § 3621 states, in relevant part:

63-3621. Imposition and Rate of the Use Tax -- Exemptions.
An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after October 1, 2006, for storage, use, or other consumption in

this state at the rate of six percent (6%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property *unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.* (Emphasis added.)

Prior to October 1, 2006, the use tax rate was 5 percent. Idaho Code § 63-3613(b)(10)

excludes from the sales price subject to tax:

(10) The amount of any discount or other price reduction on telecommunications equipment when offered as an inducement to the consumer to commence or continue telecommunications service, or the amount of any commission or other indirect compensation received by a retailer or seller as a result of the consumer commencing or continuing telecommunications service.

The two statutes are intended to apply to cellular telephones sold below cost. As a result of these statutes, if a retailer gives a deep discount [Redacted], the tax is imposed only on the amount actually charged. If the phone is given free of charge then no tax applies at all.

The taxpayer argues that its [Redacted] equipment qualifies for exemption under these statutes. The Commission has consistently interpreted these statutes to apply only to cellular telephones. Idaho Sales Tax Rule 033.04 (IDAPA 35.01.02.031.06) states:

06. Wireless Telecommunications Equipment. A retailer may give away wireless telecommunications equipment as an inducement to commence or continue a contract for telecommunications service. Such a use is exempt from tax pursuant to Section 63-3621(a), Idaho Code. For the purposes of this exemption “telecommunications service” means the transmission of two-way interactive switched signs, signals, writing, images, sounds, messages, data, or other information that is offered to the public for compensation. *“Telecommunication service” does not include the one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service, surveying, internet service, alarm monitoring service, or the provision of radio paging, mobile radio telecommunication services, answering*

services (including computerized or otherwise automated answering or voice message services). (Emphasis added.)

This definition clearly excludes video programming. It is taken from Idaho Code § 62-603 which regulates telephone companies. Accepting the taxpayer's argument would mean rejecting this rule. The Commission believes the rule is reasonable and is not contrary to the statute.

Alternatively, the taxpayer argues that it should be refunded all of the use tax it paid on purchases of equipment during the period in question. During that time, the taxpayer remitted \$90,254.19 in use tax but only \$7,484.75 in sales tax accrued [Redacted]. Since businesses generally sell their products above cost, the amount of sales tax collected and remitted on its sales should be greater than the amount of use tax paid on its purchases. It therefore appears that the equipment was either rented at a price that did not reflect market value or that the taxpayer did not collect tax on approximately 83 percent of the rentals. Under these circumstances, it appeared that the most equitable resolution was to refund the sales tax, which the Commission did. The taxpayer was asked to resolve the large discrepancy but has failed to do so.

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 Taxpayer Initiated Refund Determination dated December 7, 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.